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**FEDERAL SERVICE LABOR-MANAGEMENT LEGISLATION**

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**HEARINGS**  
BEFORE THE  
**SUBCOMMITTEE ON**  
**MANPOWER AND CIVIL SERVICE**  
OF THE  
**COMMITTEE ON**  
**POST OFFICE AND CIVIL SERVICE**  
**HOUSE OF REPRESENTATIVES**  
NINETY-THIRD CONGRESS  
SECOND SESSION  
ON  
**H.R. 13, H.R. 9784, H.R. 10700**  
**and Related Bills**

**BILLS TO PROVIDE FOR IMPROVED LABOR-MANAGEMENT  
RELATIONS IN THE FEDERAL SERVICE, AND FOR OTHER  
PURPOSES**

MAY 21, 22, JUNE 5, 12, 13, JULY 16, 25, 1974

Serial No. 93-51

Printed for the use of the  
Committee on Post Office and Civil Service



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**1974**

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## FEDERAL SERVICE LABOR-MANAGEMENT LEGISLATION

TUESDAY, MAY 21, 1974

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met at 10 a.m. in room 210, Cannon House Office Building, David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order.

The Subcommittee on Manpower and Civil Service is opening hearings today on legislation to cover labor-management relations for the Federal service. It has been the long standing policy of the Government, since the 1930's that employees in the private sector have the right to be represented by labor organizations which bargain with employers on wages, hours, and working conditions. The Congress extended this same concept to employees in the Postal Service when it passed the Postal Reorganization Act of 1970.

At the close of 1973 nearly 1.1 million civilian employees of the executive agencies of the Federal Government were represented by labor organizations. This has come about during the past 12 years largely as the result of relationships gained by both Federal agency officials and labor organization representatives during this period and the viability of those relationships, I now believe that it is fitting that legislation be enacted. This legislation will place the two parties on an equal footing when dealing with each other both at the negotiating table and when appearing before third parties envisaged by the bills before us. I believe it is also of importance that employees and their representatives have access to the judicial process when they have exhausted whatever administrative machinery is established. Access to the courts is rather tenuous under Executive order. It is now timely, in my opinion, to consider legislation which will permit Federal employees to join the great majority of American workers, both in industry and the Postal Service, in the enjoyment of well-earned rights and benefits under a Federal Service Labor Management Act. However, I believe that matters affecting pay rates, retirement benefits, health insurance, and similar benefits should remain in the domain of the Congress.

Among other things, necessity for these hearings is attested to by the fact that more than 25 bills on Federal labor relations have been introduced during the 93d Congress. Two of my colleagues on the committee, Mr. Ford and Mr. Brasco, have also introduced labor legislation, H.R. 9784 and H.R. 13, respectively.

At the time Chairman Dulski and I introduced H.R. 10700 last fall, I indicated that these hearings would be held so that labor organizations, the executive branch, and interested persons would have an opportunity to present their views and positions on the many concepts embodied in these bills. I believe that labor-management relations not only must consider the relationship between the parties and employees but the broader public interest as well. I had this in mind when I chose the title of "Federal Service Labor Management Act of 1973." We hope that these hearings will provide a forum for a thorough review by the executive branch of Government.

There are some principals which, as the result of societal progress made in this country, should no longer be subject to question; these include the right of employees to freely join or refrain from joining labor organizations and the right of these organizations to participate on behalf of the employees they represent in the process of establishing personnel policies, practices and matters affecting working conditions.

In the several bills we are considering, I am pleased to find that there are significant concepts in common. Each bill provides for the establishment of a full-time independent body to administer the act. I believe this to be proper because of the size and importance of the program as well as the need for a full-time and objective body which will be appointed by the President with the advice and consent of the Senate. Additionally, the bills all provide for grievance machinery terminating in arbitration and for "make whole" remedies for employees. I also realize that there are provisions in the bills before the subcommittee that treat a number of concepts differently and that many of the proposals may not be fully acceptable to both labor organizations and the administration. For these reasons I am hopeful and anticipate that the hearings will focus on such issues as: the kinds and types of employees and agencies that should be covered; the place of supervisors in labor-management relations, and whether labor-management relations legislation should speak to agency relationships with its own supervisors and managers; whether the bill should provide detailed specific on such matters as appropriate units, unfair labor practices, steps in impasse settlement or, instead, general guidelines permitting such matters to be handled by those responsible under the bill for its overall administration, such as the Federal Labor Relations Authority proposed in both H.R. 13 and 10700; the sphere or scope of bargaining; and the relationship between this proposed legislation and laws now in force, as well as the relationship among the executive branch, labor organizations, and the Congress on labor-management matters.

At this time I would yield to the gentleman from Michigan, Mr. Ford, for any comments that he would like to make on the subject of labor-management relations before us this morning and any specific remarks he might like to direct to his bill, H.R. 9784 which was introduced by him on August 1, 1973.

#### STATEMENT OF HON. WILLIAM D. FORD

Mr. FORD. Thank you, Mr. Chairman.

First, on behalf of all the Members of Congress who are interested in this legislation, I would like to thank you for under-

taking these hearings. I apologize, in advance, that I will be in and out of these first hearings because there are 120 local officials in town from my district who are going to require my time and assistance.

During my tenure here—and before coming here for that matter—I have had more than passing interest in the unusual phenomena that has developed within our States and within our Federal Government as to how a governmental agency deals, as management, with its employees, as labor. I have had an interest in some kind of structure where the rules of the game are written, well-understood; based on a regular legislative process, and administered in a way so that everybody can understand where their rights lie and how they are to be enforced.

I think that during the next 5 years, and hopefully it's 5 years—some people are saying 10—that the next big historical development in the condition of working people in this country is going to be in public employment. In the last few years we have seen the phenomena of the public employees' strike grow throughout the United States to the point where in the past 3 years, just with school teachers alone, there have been 6 million man-days of work lost through strikes.

I might say almost all of them were technically illegal because they occurred in States like my own where it is illegal for teachers to strike; however, 20 percent of all the teacher strikes in the country in the last 4 years have occurred in my State. Nobody has ever gone to jail for it and they always worked. So it seems to me a little bit silly that we're still trying to solve these problems with the old method.

When I first came here, the public employees were operating under Executive order which had mixed reviews depending on who looked at that Executive order, and things have not improved greatly. I have seen Federal administrators attempting to deal with the Executive order. I am convinced, Mr. Chairman, that we have reached a state where legislation is necessary so we can really define labor-management relations for public employees.

I serve on three subcommittees that are now considering this question one way or another; one subcommittee on this committee and two subcommittees on the Education and Labor Committee. Before Mr. Thompson's committee, we are considering the general question of all public employees being covered under the National Labor Relations Act, and we have the Clay bill before the second committee. On this committee we are considering some changes in the Labor-Management Relations Act for postal employees to provide for the right to strike, and my proposal before this committee for all Federal employees includes the right to strike because I am absolutely convinced that we are wasting our time by trying to create a totally different model for labor-management relations than that which is working successfully and has worked successfully throughout our private enterprise system.

I might say, Mr. Chairman, in closing, I think the experience we have had with the new Postal Corporation should be a warning to us that we need a new system patterned on a workable and working

system and not a new hybrid. We made a bad mistake it seems to me in not more closely paralleling the labor-management provisions of the Postal Service to that which we understand and is in existence. And people in labor-management relations in the private sector say, in attempting to set up a hybrid system, what we have actually done is create a situation where even the most minor differences between labor and management are now becoming a subject of long-drawn-out arguments. They are arguing about what is and what is not negotiable. They are arguing about what is a proper subject for them to bring to us for legislative attention and what is a subject that becomes off limits because of some possibility that it might be negotiated.

I certainly hope that in enacting legislation we will try as best we can to follow the patterns that have been proven as workable in the major industries in this country and not launch off again into an experiment with a hybrid or new model which goads the people who work under that model to a good deal of disagreement over trivial matters sometimes in an attempt to develop a new base.

The National Labor Relations Act will be 40 years old next year and for 40 years the courts and parties—labor and management—have been interpreting the provision of that act. Its only had four major amendments in the full 40 years; three of them are fairly recent. Probably the most dramatic was the Taft-Hartley Act. But in 40 years it has served extremely well and that's not to say that everybody has been happy with it, but we have developed a 40-year history of law that would be very useful to us to the extent that it can be used in this legislation.

Thank you, Mr. Chairman.

Mr. HENDERSON. Thank you, Mr. Ford.

Mr. FORD. Mr. Chairman, one more thing, I think for the Vice President's peace of mind, I should say this: Somehow the story got out that H.R. 9784 was introduced by the other Congressman Ford before he was appointed Vice President, and knowing the differences that he and I have experienced over labor-management relations, I can't imagine that that could be anything but embarrassing for him. But I want the record to show that this is my bill and not his.

Mr. HENDERSON. Mr. Brasco has had a longtime interest in this subject. He introduced the first bill that was assigned to our subcommittee, H.R. 13. I am delighted to recognize him at this time.

Mr. BRASCO. Thank you, Mr. Chairman.

I have had a strong interest for a number of years in the problem of effective labor-management relations in government. During this time I followed very closely the experience through the Executive order. I have also read happily the many letters I have received from rank and file Federal employees on this subject. The experience gained by all parties has been valuable.

The issues are better defined and understood today. Some progress and improvements have been achieved. Perhaps we will see some further advances as a result of the recent hearings held by the Federal Labor Relations Council on possible revisions in Executive order practices.



In any event, Mr. Chairman, I believe that two things are now evident: that first, a truly fair, stable, and effective system of labor-management relations in government must be based and founded in law; second, that we now have sufficient practical experience to write a sound, workable statute.

These are the reasons why I introduced H.R. 13 which was designed to provide such a system this year.

One key provision of H.R. 13 is for the establishment of an independent and full-time Federal Labor Relations Authority, with three members to be appointed by the President and subject to Senate confirmation.

H.R. 13 also provides for the principle of binding arbitration of grievances and disputes. It provides, too, for the payment of fees by members of a unit who benefit from representation by the union but are not dues-paying union members. Together, these two provisions do a little to redress the great imbalance which now exists at the bargaining table because of the prohibition against strikes by Federal employees.

H.R. 13 extends the scope of collective bargaining beyond the arbitrarily narrow limits now possible under the Executive order—it provides bargaining rights to all employees of all agencies of the Federal Government except in certain cases where the denial of such rights is clearly justified because of the conflicts-of-interest that would otherwise result—and it makes possible the establishment of bargaining units of appropriate size, in order both to recognize the true communities of interest among Federal employees and to deliver management from the present need to negotiate the same issue over and over again with a multitude of small units.

I think H.R. 13 provides a sound and moderate approach to this whole problem, one that is fair to management, fair to employees, and—above all—fair to the citizens of the United States.

I congratulate Congressman Henderson and this committee for holding these hearings. They are responding to a real need at a time when interest and desire for action in this area are high. I hope that the hearings will be most productive and that from them will come a statute that will provide the base for the kind of equitable, stable, and effective labor-management relations I think we all want to see in the Federal Government.

Mr. Chairman, I see that there are many witnesses here, and perhaps some on the firing line already, just anxious to testify on behalf of this bill; is that correct—

Mr. HAMPTON. Mr. BRASCO, I think what you will hear me say is that there are a lot of factors here. I think I'm going to raise more questions for you than I'm going to answer.

Mr. BRASCO. In any event, Mr. Chairman, I think that everyone knows specifically where I stand with respect to this and I certainly want to commend the chairman for calling the hearings today so that we could get on about the work of considering all of the pieces of legislation advanced before this committee and hopefully come up with a system that's fair to the employee, fair to management, and above all, fair to the American citizens. I thank you for the time.

Mr. HENDERSON. Thank you very much, Mr. Brasco.

Perhaps I should explain to the other members and the audience too, that I will yield to the minority but I thought that perhaps they would like to have the statement on the part of the authors of the legislation. It's true we have witnesses we want to hear from, but I'm sure that the chairman and others would like to have a brief explanation of the philosophy of the authors of the legislation and what we are attempting to do in the various bills and I appreciate the remarks of the gentlemen.

If I may at this time, I'd like to make a brief statement with regards to my own views on H.R. 10700 because in drafting and introducing this bill which was co-sponsored by Chairman Dulski of the full committee, I gave full cognizance to the fact that the competitive civil service system has been with us since 1883 and provided an equitable method for entering the Federal service.

It's well to recognize that Federal employees operate in the public interest providing service to all of the people. The services are those which we believe are better provided by the Government rather than by each of us individually. Therefore, in the provisions of H.R. 10700 I provided that Federal employees would continue to be subject to the no-strike law; that Federal employees will be free to determine whether they will or will not be required to join a labor organization. It attempts to provide for the balance of the respective rights of the parties with effective third party proceeding procedures before independent bodies or arbitrators to ensure timely decisions with justice and equity.

Additional provisions provide for no cost to employee organizations for the dues withholding of its members, negotiating an agreement, required appearance before the authority on official time, certification without elections in certain circumstances, and provides an employee organization may choose to represent nonmembers in grievances.

I suggested in H.R. 10700 the method for broadening the scope of bargaining and have provided certain specific items which should not be negotiable or, if you will, a public interest clause.

These concepts, taken together, are in my view a central foundation for legislation governing the Federal service labor-management relations. It will be within the realm of all of the bills before us that spokesmen for the administration will be heard; also, the views of the various labor organizations or other organizations that are interested in this subject will be presented to us in these hearings. On that point, it is the intention of the Chair to provide as much time as possible for the witnesses so that we may have a full and complete record. We are plowing new ground and certainly it's a subject of great deal of importance to the future of our Nation.

It may be that the committee will decide that witnesses who testify in these early sessions of the hearings will be helpful to us later as we hear from other organizations and we may call you back. I want to assure everybody involved that we will be as deliberate and keep the record open for the views of everybody as we possibly can. We certainly will make every effort to hear from responsible organizations. In some cases it will not be possible to

provide an opportunity to testify, but certainly all views will be received for the record if they are properly submitted to us.

I want to commend all of you for your attendance this morning. I recognize, as Mr. Ford pointed out, that some may have to leave. Mr. Lehman has mentioned that he has to testify before another committee. But, if you will, as we hold these sessions, make every effort to come back when you can, I will certainly try to afford you every opportunity to be kept up to date on the record that's being written. I guess we should make an attempt to operate under the 5-minute rule as part of the procedure, but the Chair will certainly be as lenient in watching the clock as I can to be fair to all the members that are attending.

At this time I am delighted to yield to the minority and other members who are here this morning.

Mr. MALLARY. I have no formal statement, Mr. Chairman, but I do appreciate your calling the hearings. I think it's very important that we do write a full record on this and I think the balanced scope of hearings which you are planning are very significant. Certainly this is a vital subject which we are all concerned with and I think many of us are looking forward to new information. I think the dialogue and the information that will be presented will certainly be significant to all of us.

Mr. HENDERSON. Mr. Lehman.

Mr. LEHMAN. I just want to thank you, Mr. Chairman, for calling this meeting. I'm sure it's going to be very productive. I have had one experience with labor relations in the public sector when I was on the Dade County School Board. We had no machinery to set up to handle the situation when we had a confrontation and therefore we didn't have a strike which was illegal but we had a walk-out which was just as destructive.

Mr. HENDERSON. Mr. Taylor.

Mr. TAYLOR. Mr. Chairman, I have no formal statement. I do look forward to these informative hearings and I commend you for your leadership in calling these meetings and for the broad base of input that you have planned for these hearings.

Thank you.

Mr. HENDERSON. Before I introduce our first witness, I would like to take just one moment for the benefit of the record and all here to commend the staff of our subcommittee and Mr. Mesker for the very long hours spent in drafting some of the bills that are before us, especially the bill that Mr. Dulski and I introduced. Not only have they provided the usual staff service to the members of the subcommittee as we prepared for these hearings, but have been in constant contact with the Civil Service Commission and the other Federal agencies vitally involved in the subject that we will be considering, and in addition to that, on their own time have spent numerous hours talking and conferring with people at all levels of Government, both in the Congress as the various Members of Congress have contacted us, and in industry and business, hopefully to develop a very comprehensive and very important piece of legislation affecting our Nation. I certainly would want to recognize at

this time that their work has been outstanding and certainly will be very fruitful to us in the weeks ahead.

Our first lead-off witness this morning is the Chairman of the Civil Service Commission. Of course, Mr. Hampton has appeared before this subcommittee and the full committee on numerous occasions. I noted earlier this morning, Mr. Chairman, that one of the writers here in the Washington area commented on the dryness of the subject. He did also recognize the importance of it, but I have always found that these matters perhaps don't catch headlines and perhaps are not as sexy as some of the others, but when you come before us you always do a fine job and show that you have got a real grasp on the problems of the Federal employees. You always are very helpful to us and I know of no one better qualified to lead off on this particular subject. I recognize that during these years not only as Chairman but as a member of the Commission in prior years this is a subject that has been very much before you. You have had great input into the real meaningful operation of the Executive orders and I know of no one that will have greater input into the final resolution of this problem than you and your staff members at the Commission. It's a real pleasure on behalf of all the members of the subcommittee to welcome you this morning.

**STATEMENT OF HON. ROBERT E. HAMPTON, CHAIRMAN, CIVIL SERVICE COMMISSION, ACCOMPANIED BY TONY INGRASSIA, DIRECTOR, OFFICE OF LABOR-MANAGEMENT RELATIONS, CIVIL SERVICE COMMISSION**

Mr. HAMPTON. Thank you very much, Mr. Chairman.

I saw that same column this morning and it is a subject that people tend to think is dull, mainly because it's something that is not easily grasped. It's very complex. It has a strong element of law in it. But I think it is one of the most important subjects that this committee has had to address in the 20-some-odd years that I have been around Washington.

Mr. Chairman and members of the committee, we are pleased to have this opportunity to appear before your committee this morning to share the administration's thinking on the various labor-management bills pending before you. With me is Mr. Tony Ingrassia, Director of the Commission's Office of Labor-Management Relations. This office has prime authority for assuring the Commission meets its assigned responsibilities under Executive Order 11491 governing the Federal labor-management program.

We want to particularly acknowledge the courtesy the committee has extended in giving me 2 days in which to explore the ramifications of a legislated labor-relations system covering Federal employees. There are many fundamental issues concerning the entire fabric of Federal personnel laws that must be addressed in any meaningful consideration of broad-gauged legislation of the types embodied in bills before this committee.

At the outset, let me just briefly preview the areas we would like to cover during these 2 days of testimony. We have provided

you with our statement for the record, which is an in-depth treatment of what we'll be discussing today:

1. The principles upon which the Executive order program is based, our experiences and our accomplishments with the program.

2. The special and unique characteristics of the Federal Government as employer.

3. The evolution and basic features of the Executive order program, our challenges and progress under the program and how we are moving forward to deal with problems the program is designed to resolve.

4. The other existing systems which promote bilateralism in Federal personnel administration, and the need to assure that personnel policies requiring governmentwide uniformity continue to be handled through a central agency in which labor relations is fully integrated.

5. The major deficiencies we strongly oppose in provisions of pending bills, and the fundamental concerns which must be addressed in any consideration of broad-gauged legislation to govern labor-management relations in the Federal service.

6. The lack of demonstrated need for such legislation. And, finally, the basic philosophy of labor relations we strongly support for balanced employee, union, and management rights and responsibilities in the public interest.

The thrust of all our testimony is that the Executive order program is operating successfully and that there is no demonstrated need for changing to a legislated program—and certainly not to one with many great departures from tested methods.

Furthermore, it is our strong feeling that any serious consideration of legislation must come to grips with the fundamental issues inherent in any basic change in the overall program of Federal labor-management relations. To focus attention on these issues, we have provided you with Summary Charts on 17 identified issues. Of these, we would like to devote special attention to the following in our testimony tomorrow:

The central authority—its role and authorities.

Superseding—the impact of collective-bargaining legislation on existing laws.

The scope of negotiations—as it relates to established bargaining-unit structure, to the current unavailability of economic trade-offs, and to congressional authority and oversight responsibilities.

The paramount need to protect merit principles and other expressions of the public interest.

The need to identify who the “employer” will be—for purposes of collective dealings.

In addition, we have furnished you with detailed background information on union recognitions and agreements, third-party functions and case handling, collective-bargaining experiences and results, structures for labor-relations effectiveness, comparison of private and public sector economic fringe benefit levels and section-by-section comparison of Executive Order 11491 and pending bills.

The climate for labor-management dealings and relationships in the Federal Government has evolved from the first principles on which the existing program is based. These principles are as valid

and timely today as they were when the Executive order program was formalized 12 years ago in Executive Order 10988 and modernized with the provision for third-party machinery in 1970 by Executive Order 11491, which has since been amended.

As the essential statutory framework of Federal personnel policy, merit principles provide the context within which collective dealings must operate. And the essential authority of public officials to meet their obligation to manage effectively must be maintained. What the Executive order reserves to Federal managers—commonly referred to as “management rights”—are in reality those responsibilities required of Government to manage in the public interest.

A major strength of our program under Executive order is its ability to make the periodic adjustments necessary to accommodate to new conditions in an orderly and evolutionary process. The twin imperatives of “improved well-being of employees” and “efficient administration of the Government” under Executive Order 11491 have shaped the policy, the procedures and the direction of the Federal labor-relations program.

That we’ve come a long way as a result is shown by the overall record of accomplishment and benefit.

Unions have grown and stabilized. As of 6 months ago, nearly 1,100,000 employees, or 56 percent of the entire nonpostal Federal work force, had been organized into exclusive bargaining units. That’s just about double the proportion in private industry, and it includes very close to the total population of eligible employees in the Federal blue-collar work force. See attachment 1.

More recently, a dramatic upsurge in negotiating activity has broadened agreement coverage to a very considerable measure. Our studies have shown that over 77 percent of all nonpostal Federal employees in exclusive units are covered by negotiated agreements, with an additional 17 percent on the verge of initial agreements. This overall total of 94 percent cannot be far out of line with the situation in private industry; and even if we assume agreement coverage there approaches 100 percent, the gap is narrowing all the time.

The collective bargaining process is at the heart of any labor-management program, and the Civil Service Commission in conjunction with the Office of Management and Budget recently undertook to determine just how it is working under Executive Order 11491. To distinguish fact from opinion—and to sharpen our perception of the total picture—we surveyed the bargaining experience throughout Government. The returns are now in on almost nine-tenths of our program’s more than 3,400 recorded units, including virtually all of those under negotiated agreements. See attachment 7. What emerges is an overall record of bargaining achievements under the Executive order program, notably:

The parties are reaching final agreement in only a few months of negotiations—within 3 to 4 months—in two-thirds or more of bargaining situations.

More important, they are learning and managing to settle their own problems across the table in their own way, and mostly on their own. Only 16 percent of bargaining situations required third-party

involvement—and most of them involved only mediation—344 cases. With all other third-party involvement—the Federal Labor Relations Council, Federal Service Impasses Panel and Assistant Secretary of Labor—confined to just about 80 bargaining situations.

And these agreements incorporate a variety of matters every bit as broad and important as in private industry—with the exception of those areas where Congress has either retained direct control or has established a special statutory mechanism. The matters covered by agreements are amply documented in the Commission's new Labor Agreement Information Retrieval System, which for the first time ever gives us a current, automated handle on what's been negotiated in the Executive order program. See attachment 9. Included in the wide range of negotiated items are provisions which go beyond what's required in regulations, with bilateral—instead of unilateral—grievance procedure because of their presence in agreements. We find, for example:

That more than 820,000 Federal employees enjoy access to negotiated grievance procedures—most of them providing final and binding arbitration.

That some 718,000 are covered by negotiated promotion policies.

That about 712,000 are subject to negotiated overtime clauses.

That almost 652,000 are under negotiated safety provisions.

That over 589,000 are covered by negotiated disciplinary policies.

These are only a few examples of the very real and tangible accomplishments produced through the collective bargaining process in the Executive order program. And they represent only a part of the total employee benefits package developed on a bilateral basis in the Federal service. There are other mechanisms providing for union participation in developing wage and fringe levels which must also be considered in the total picture.

But before going on to them, I would like to review some of the systemic reasons why basic pay and economic supplements aren't deferred to the bargaining table in the Federal sector—reasons that inhere in the nature of our system of Government.

The setting for labor-management relations in the Federal service has evolved from the special and unique characteristics of Government as employer—actually, a multiplicity of employers in some 70 departments and agencies employing some 2 million nonpostal civilians. Congressional control over taxation and the budget process, the monopoly character of much of Government's activities and the concomitant necessity for uninterrupted service, expression of the public will in Federal personnel affairs—these are some of the conditions that make us a very special and unique kind of employer, and distinguish us from employers in the private economy. They do tend to limit the scope of bargainable matters—in ways deemed to be vitally necessary in the public interest.

Notwithstanding these essential differences, however, some critics of the Federal labor-management program blindly favor a wholesale transplant of private sector law, precedents and practices into Government. This might work if Government were just another industry. It is not. The Federal program today is a product of the distinctive conditions that exist in Government, just as the private

sector program is a product of the quite different conditions that prevail there. What makes the Federal environment so special?

Labor organizations enjoy long and very important relationships with the Congress. This hearing itself is an example of their impact in the legislative process. Unions in private industry do not lobby their employers for benefits outside and in addition to those negotiated across the table.

Federal employees benefit immensely from a wide variety of statutory and regulatory policies and protections. These have been achieved through significant union input to the political and administrative processes of Government.

The Executive order itself has fostered a positive approach toward union organizing and dealings. In contrast to the private sector, the Federal Government has adopted a position of neutrality on union representation of its employees. Government officials do not mount "vote no" campaigns in union elections.

The Congress has outlawed the strike among employees of the Federal Government—in recognition of the paramount need to ensure the uninterrupted delivery of services to the public. In its place, there is viable and effective machinery for determining economic and other major personnel benefits. While this removes concerted job action as a lawful weapon in collective bargaining, the Government—as employer—has no desire to deny to Federal employees the general level of rights and benefits secured through negotiations in private industry. On the contrary, the rights and benefits which Federal employees enjoy are fully comparable to—and in some ways better than—those in the private economy. See attachment 10.

I think it is eminently clear that labor-management policy in the Federal sector cannot be the same as in the private sector. While we have some things in common with collective bargaining as it is practiced in private industry, there are basic and special differences which demand a special and different program for the Federal service.

The state of the program for Federal labor-management relations today is a result of these essential differences as reflected in our continually evolving character. The Executive order has been revised substantially three times; even now, we are headed toward still another revision as a result of our current review of the program.

As these revisions in the program suggest, ours is not a model of immutable perfection. There are problems, and we have made and continue to make the changes necessary to meet those problems. Some of the inevitable problems that would exist in any program—statutory or Executive order—have been blown up out of all proportion to create the impression that the Executive order program isn't working. To the contrary, I believe that the record in resolving problems amply demonstrates that the overall objectives of Executive Order 11491 are being met and that the machinery for dispute resolution is working well.

Over 370 grievance-arbitration awards have been rendered under the Executive order program; and, of course, this figure doesn't include the many worksite grievances which are settled in the negotiated procedure and which never reach formal arbitration. These



awards have resolved disputes in a wide variety of areas—including such areas as administration of pay and leave, promotion, discipline, work scheduling and representation. The majority of arbitrations have involved installations within the Department of Defense, where a total of only 12 exceptions to arbitrators' awards have been filed—5 by management, 7 by unions—indicating the high rate of acceptance both parties have given to the arbitration process.

The Federal Labor Relations Council has closed 129 of its 146 cases of all types—negotiability disputes, appeals from determinations in representation and unfair labor practice cases, and exceptions to arbitration awards. The Council's appellate function has increased dramatically—with three times as many cases closed last year as in the previous year—and the leadtime in case processing has been shortened dramatically. See attachment 3.

The Federal Service Impasses Panel has closed 92 of its 105 requests for assistance in negotiations—with most of them settled informally. Only 18 cases involved issuance of a formal report and recommendations following factfinding, and 16 of them were accepted in toto by the parties; in the other two cases, the Panel's recommendations were used as a basis for settlement. See attachment 4. This is the Federal alternative to the economic or "contract" strike, and the record shows wide acceptance by the parties directly involved.

The Assistant Secretary of Labor for Labor-Management Relations has closed 4,385 of his 4,962 cases of all types—representation, unfair labor practice, standards of conduct, grievability-arbitrability—while his Labor-Management Services Administration has supervised 2,063 representation elections. Year-to-year comparisons in the number of elections supervised reflect the recent leveling off in union organizing under the Executive order. And although the number of unfair-labor practice cases had shown a steady increase from 1971 through 1973, projections based on the first quarter of 1974 indicate there may be fewer such cases this year than last. See attachment 5.

These figures demonstrate that the third-party processes under the order are distinguished by their "successes"—that the loudly alleged "failures" in isolated cases are the exceptions that prove the rule. This is not to say problems do not exist; they do, and we are moving ahead to meet them. But they should be viewed in the true and broad perspective of Executive order experience—and this is one of overall and increasing successes in surmounting new challenges.

The total environment of labor relations in the Federal Government provides a responsiveness to employee and union concerns that extends well beyond the Executive order framework—in many important directions. The Executive order program realistically cannot be viewed as the alpha and omega of formal and structured opportunities for collective participation in determining personnel policies, practices and working conditions.

Over and above what is derived through the collective bargaining process under the Executive order program, improvements in wages and fringes are obtained through a variety of bilateral mechanisms which represent a close first cousin to collective bargaining. Together, they provide direct union involvement on all the various "personnel policies, practices and matters affecting working conditions" of

Federal employees. If the particular form utilized in a given area is not the same as in private industry, it is because the Congress has determined that the Federal Government is not the same as a private employer for that purpose.

Even in the so-called "bread-and-butter" areas of wages and economic fringes which have been removed by law from the negotiating table in the Federal sector, unions enjoy a very real say and influence. Their representatives serve on a variety of statutory bodies dealing with Federal employee pay and fringe benefits:

The Pay Comparability Act of 1970 established a Federal Employees Pay Council of five union representatives, who deal with the President's agents in formulating wide-ranging recommendations on the entire system and processes involved in determining pay comparability for white collar Federal employees.

As early as 1963, the Civil Service Commission established a National Wage Policy Committee of five union and five agency representative who met face to face over a long period of time to establish all policies and operating instructions for the Federal blue collar pay system. The Committee makeup was modified slightly and established by law as the Prevailing Rate Advisory Committee, which continues to meet weekly to work out systems and problems on the wage board pay program.

Other examples of "bilateralism" beyond the Executive order program include union participation on the health benefits and life insurance advisory committees on economic fringes, and on the Federal Safety Advisory Council. In addition, the Civil Service Commission—long recognizing the necessity and value of involvement by employees, through their union representatives—has, on its own initiative, regularly and systematically consulted with them in the development of governmentwide personnel policies.

The axis that makes all of these systems work in concert is our Federal system's provision for a central personnel authority responsible for personnel policies requiring governmentwide uniformity in which labor relations is fully integrated. This is the role which is carried out by the Civil Service Commission in assuring that the interworkings of central personnel administration and labor-management relations operate efficiently and effectively.

From the standpoint of effectiveness as well as fairness, it is essential that government retain this centralized capability for developing and administering policies designed to achieve a necessary degree of uniformity and equity in matters common to employees of more than one agency. This arrangement doesn't retard labor-management dealings; it facilitates them. Consider the results:

Employee representation in the statutory pay and fringe systems plus employee representation in collective bargaining under the Executive order have produced improvements equalling the general level of benefits in the private economy, including the most highly unionized industries. See attachment 10. If anything, we are having to contend with criticisms that the Federal employee is more equal than his private-sector counterpart in the economic conditions of employment.

All of which should make abundantly clear to even the most skeptical critic that if our existing program and mechanisms do not happen to fit some preconceived notion of what they ought to look like, they nevertheless yield improvements that meet or exceed the full measure of comparable expectations.

The proposals for change embodied in legislation before you now would usher in wide and potentially disruptive departures from established systems in Federal personnel administration—beginning with the repeal of the existing Executive order program for labor-management relations, but not stopping there.

While there are important variations between these bills—variations in approach, as well as in substance—all of them are variations on a common theme: They would make fundamental and far-reaching alterations in the relationships between the Federal Government as employer and its employees and their union representatives. It is from this perspective—that is, in terms of impact—that we have carefully reviewed the bills and compared the variations. See attachment 11.

An exhaustive discussion of all the provisions of all the bills would not be appropriate at this time. Their implications are developed more fully in the statement for the record which we have furnished to you. I would, however, like to highlight some of the very real practical concerns we have with what we see as deficiencies of major provisions in pending bills. These are concerns which must be addressed in any consideration of such legislation.

Conflicts of interest and separation of powers both go largely ignored from the very outset in H.R. 13 and in H.R. 9784, in their arbitrary and indiscriminate coverage of all Federal instrumentalities outside the Postal Service. Features of these two bills would apply to the FBI and CIA in the executive branch and to competitive positions in the legislative and judicial branches alike—in addition to the departments and agencies currently under Executive Order 11491. And even within those instrumentalities, the broad-brush coverage would draw no distinction between the rank and file and those who investigate and audit their work or enforce the rules and regulations; would revoke the authority to exclude on national-security grounds; and would replace the functional criteria for excluding supervisors and management officials with unrealistically narrow standards of income level, span of control and scope of impact. This kind of shotgun coverage would be sure to backfire on effective labor relations, just as it would on the efficient and credible administration of government.

#### PAYMENT OF THE EQUIVALENT OF UNION DUES AND FEES

This would be required as a condition of Federal employment and job retention under the so-called "agency shop" arrangement authorized by both H.R. 13 and 9784. Requiring membership in a labor organization or mandatory payment of equivalent fees as a condition of Federal employment conflicts with merit principles, which base continued employment on ability to do the job assigned and which bar use of discriminatory measures in making personnel decisions.

THE PROSPECT OF STRIKES, INCLUDING DISRUPTION OF VITAL GOVERNMENT  
OPERATIONS

This could be posed by H.R. 9784, which would provide a conditional right to strike government operations in certain instances, while the issue is clouded in H.R. 13 where there is no ban and where it is unclear as to what effect the bill's supersedure clause might have on the current statutory prohibition. The strike "right" is not an acceptable alternative to peaceful and orderly impasse procedures in Federal labor disputes; it is manifestly incompatible with the public's essential right to continuity of government services and national defense.

REPEAL OF EXISTING LAWS AND EXECUTIVE ORDERS

This could be accomplished by the provisions in H.R. 13 or 9784 for supersedure of all previous statutes and Executive orders concerning the same subject matter or inconsistent with these bills. This raises questions as to the extent to which civil service laws—such as all of title 5, United States Code—may be overridden. It also raises questions concerning the degree to which congressional authority and determination could be affected in areas such as pay, benefits, and classification. In their present form, the supersedure clauses appear to open to negotiation many areas presently subject to congressional action. For example, would separate retirement or leave systems evolve—one for unit employees, another for nonunit employees? Would different agencies or installations negotiate different insurance programs? Or would the supersedure be selective; if not, who would determine the criteria and which laws would be replaced and would not? These are examples of the kinds of questions these bills raise but fail to answer.

PREEMPTION OF HIGHER LEVEL RULES AND REGULATIONS

This would be the effect of provisions in both H.R. 13 and 9784 which would reverse the current requirement that negotiated agreements conform to "appropriate"—higher—agency regulations. Such regulations would be preempted to the extent they conflict with terms negotiated in any of the more than 3,400 existing bargaining units. The Civil Service Commission could not make or apply rules or regulations where needed to protect the public interest and maintain efficiency of Government operations. Policies and regulations designed to achieve a necessary degree of uniformity and equity in the administration of matters common to all employees of the agency, or to employees in more than one subordinate activity, would be adversely limited. In their place could come extreme disparities in the conditions of employment for employees similarly situated and a gradual abandonment of equal pay for equal work as a protection against inequities in compensation for Federal employees.

I have chosen to key on these provisions so as to touch on some of the most fundamental issues which must be addressed in any consideration of a labor-relations program in the Federal Government.

H.R. 10700 warrants separate mention. The product of much good thought and effort, it already has served the extremely useful purpose of provoking dialogue on the implications of labor-management legislation.

In our review of H.R. 10700, we particularly noted that it presents a substantially more reasonable approach and balance to the rights and interests of the public, employees, unions, and management than other bills in the 93d Congress. But it raises some difficult questions, too, the most serious of which involve the bill's provision for a Federal Labor Relations Board—of five agency and five union representatives, with a chairman designated by the Chairman of the Civil Service Commission—to render determinations on centrally developed and issued personnel policies and regulations of Government-wide application.

It is not clear on its face, for example, whether the Board's authority would extend also to rules and regulations affecting the unorganized and exempt, excluded, segments of the work force. If so, what would be the justification for this? If not, what would be the best way to deal with them?

What does seem clear is the potential for the Board—or more likely for a single individual, in the person of the Board's Chairman—to exercise essential personnel authorities historically delegated by the Congress to Federal agencies and officials, the Commission, in particular, to enable them to carry out their statutory responsibilities. While we agree that the controlling impact of Government-wide regulations can have a narrowing influence on the scope of bargaining, we would strongly oppose any approach so extreme as to, in effect, "throw the baby out with the bath water." In fact, a means of improving the existing situation—that is, escalating the level of bargaining to the regulating level—is high on the Federal Labor Relations Council agenda in the current review of the Executive order.

In our review of H.R. 10700, we noted also that the bill incorporates many of the existing approaches and mechanisms embodied in Executive Order 11491. Our main concern is whether even this legislation would enhance labor-management dealings in the Federal service beyond the measure of progress already provided for through existing statutory mechanisms and in the advancing Executive order program.

That is to say, events have not made our system obsolete; rather, they have confirmed its viability and continuing adaptability. In fact, the forces for change in our system can be viewed realistically in three ways:

- (1) Changes that can be made successfully within the Executive order framework. The Federal Labor Relations Council has just completed an indepth process of receiving the written and oral suggestions of unions, agencies, and other interested parties and now is reviewing possible changes in the Executive order program.

- (2) Changes that would require the kinds of legislative action we might support. The executive branch is willing to work with organized labor and the Congress in such statutory areas as authorization for make-whole relief to afford back-pay remedies and for

negotiation of binding arbitration of adverse actions—that is, major disciplinary actions.

(3) Changes that would require the kinds of legislation we could not accept and Congress has opposed in the past. Examples include the union or agency shop, negotiation of pay rates and economic fringes on a fragmented bargaining unit basis, the right to strike.

In sum, we are continuing to move forward through established systems to deal with acknowledged problems. We have a program we know can work, one we know we can grow with, one we know can promote the optimum balance among all the parties at interest—Government, its employees, their union representatives and, above all, the public.

If you accept collective bargaining as a positive force in personnel administration—and we do—then our record to date, overall, is a powerful rejoinder to the notion that the existing system isn't working. It is changing in constructive and purposeful new directions. Now is not the time to impose fundamental and sweeping changes in the ground rules for Federal labor relations—not the time for lawmakers to fix their legislative sights on what is still a moving target.

By any measure, the Federal establishment is a "megaemployer," a vast and complex configuration of activities and missions that best responds gradually and deliberately to new conditions imposed by new systems. This is as true in personnel administration as in any other field of public endeavor. It is doing so now. It will continue to do so as our labor-management system continues to improve with experience.

Those who are urging a "me-too" approach for adopting broad-gauged legislation fail to take stock of the realities. They are ignoring the very real distinctions of the Federal Government as employer, and they are blurring the historical perception.

The Federal service today is not where the private economy was 40 years ago. We operate under an established system of labor-management relations; then, there was none. We are progressing in an orderly and peaceful process; 40 years ago, there was a real need for a law to achieve industrial peace.

In industry then, there was a demonstrated need for comprehensive labor-management legislation. In Federal Government now, there is no demonstrated need for such broad-gauged legislation. The situations are not merely dissimilar; they are diametrically opposite.

The Executive order framework has been refined and continued through three administrations. Overall, it has been conspicuously successful in responding to employee interests, in facilitating union growth, and in improving employee communication with management. In contrast, there has been no compelling evidence that the proposals before this committee would provide a better or more balanced program.

Mr. Chairman, this concludes my prepared remarks for this morning. Tomorrow, I plan to consider in more depth the complicated and serious issues posed by any legislated system of collective bargaining superimposed without full consideration of the impact on an existing framework of personnel legislation. We will now be happy to answer any questions you and the members of your committee may have.

Mr. HENDERSON. The attachments and the statement submitted by Chairman Hampton will be entered into the record at the end of today's proceedings.

Mr. Hampton, I certainly commend you on the decrease of the cases that are in process by the Council. What reason can you ascribe to the increased number of cases closed as well as the shortening of the processing time?

Mr. HAMPTON. Well, Mr. Chairman, we have made some internal administrative or operational changes in the way the Council processes its cases and this accelerated the decisionmaking process. In addition, I think what we see reflected here is that as the third party machinery began to work the first issues that were before us were, of course, those coming before the Assistant Secretary, in determining bargaining units. Then came the second stage after these organizing and unit matters were taken up; we shifted more into the negotiating stage and issues of negotiability began to be raised with the Council. This accounted for the increase in number of cases and the Council had to change the way it operated internally in order to review these. It switched from dual handling and many internal written briefs on every matter and went more to oral presentations by staff.

Mr. HENDERSON. H.R. 13 and H.R. 9784 generally have broad definitions of the term "grievance" to include those matters that are technically now spoken of as appeals. H.R. 10700 would exclude matters subject to appeal procedures pursuant to law.

What are your views on these definitions?

Mr. HAMPTON. Well, there is a tendency when thinking in terms of matters of differences between employees and employers to say grievances, whereas the Federal Government has long had the statutory system for the more serious types of personnel cases and those are called appeals. So there are grievances and there are adverse action and appeals and it's a difference in terms of magnitude of impact on the employee.

Now for a long time under the Executive order, in fact in our last review, we made it mandatory that each agreement have a negotiated grievance procedure in it. So the employees in that exclusive unit can negotiate a procedure.

In adverse actions which are covered by the Veterans Preference Act, this being a statutory system, it would require an act of Congress to have those in negotiated agreements, but we're working now on a legislative proposal to ask the Congress to give us the authority so that these agreements could include a negotiated adverse action system.

Mr. HENDERSON. In your testimony concerning a Federal Labor Relations Board that would be established under the provisions of H.R. 10700 you indicate it's not clear whether the Board's authority would extend to rules and regulations affecting unorganized segments of the work force. The bodies that now set pay for both blue collar and white collar employees, include labor representatives, and the decisions of these bodies affect the organized as well as the unorganized.

Therefore, could you give me your views as to the best way to handle the scope of the Board's authority in this area?

Mr. HAMPTON. I think you would have to change the language that is in the law to very explicitly spell out the scope of their—rather, the breadth of their responsibility. If they are to be a third party in labor relations, then it isn't necessary for them to have the authority to issue rules and regulations.

One of the difficulties you get in trying to construct this in law is the interpretations of whatever agreement they might have under some particular policy. Are they limited to just making determinations within those parameters or can they reach out and make their own rules as they see a problem? And this is what I see. It appears from the language there that this body could make any rule or any regulation which would affect the Federal Government, regardless of what the President, as Chief Executive Officer, might have. I mean, I don't know the precise language. It is one of the things that in the process of considering various alternatives in labor relations the committee really is going to have to address itself to what you really want this Board to do.

Mr. HENDERSON. Finally, before I yield to my colleagues—perhaps I should turn to the more basic point I think you were making in your testimony as it relates to the question of whether or not there should be legislation.

It would be possible for the Congress to simply write into law the provisions of the existing Executive order. Would you have objection to that being done?

Mr. HAMPTON. I think I would, in the sense that if you're going to move to a statutory system, I think that the character of the Federal Labor Relations Council body or the central body would really have to change. Essentially, the Council is a body that really sort of directs this program in a sense of keeping it within all of the various parameters prescribed by law, and if you were to go to a strictly third-party type of operation I would rather see the membership of the Council changed from the present way it's constituted.

I can't see the Chairman of the Civil Service Commission and the Director of the Office of Management and Budget or the Secretary of Labor serving on a statutory board that would mainly be an adjudicatory process alone without policymaking authority.

I think the principles in the Executive order are sound. I think they reflect a balancing of interests, a recognition of the fact that the management in the Federal Government is not free, like the management in the private sector, to deal with the economic issues. That's really something that is reserved to the Congress and I personally feel that's where it belongs. I mean, Congress is here elected to represent the public interest and the public has a very proprietary interest in the conditions of service of civil servants. These sometimes are not expressed until there's a major problem or a disaster, but it's one of these latent types of things that pops up.

I think you have to recognize in a legislative system—and even in our present system—that the policymaking body on most of the major economic issues and the taxing authority rests with the legislature and we have to operate under the constraints of certain laws. There are certain conditions of employment that we have no authority



to negotiate at all and these, in a sense, the union and the executive, speaking broadly of them on the management side, have come up to the Congress and have said, "We favor this and we favor that," and the Congress has made a choice and passed a law and said this is law and that's what has to be implemented.

So there are many tiers in the system and then the Civil Service Commission has certain responsibilities that are given it that are statutory in nature or there are certain laws that have been passed that say to the President, "You must do this," and the President uses the Civil Service Commission as the action instrumentality. That's why we were set up. So we do regulate in these areas.

Now someone says, "Well, this means that that is off the bargaining table." It is off the bargaining table in the sense that people down in Charleston do not negotiate on that because we don't have the authority to negotiate on it. This is something that has been assigned to us to do by law. But what we do in the field of regulating which is something new, which I think goes sight unseen because it isn't something that anyone is particularly getting credit for, is that we do have a very formalized system of consultation with the unions and with the Government agencies.

We don't sit there and make policy in an ivory tower or in an abstract way. We go to the agencies and we go to the unions and we say this is what we're being asked to do by law; this is what we propose to do; let us have your comments; and they comment and then we sit and we discuss these particular issues and then the Commission, as a policymaking body, makes the final decision—and it's a question of what the agencies say; it's a question of what the unions say. So we're sort of in the middle in that particular thing, but this is not to say that the employee at this particular tier in the process has no voice. He has an extremely important voice and you can look at the substance of policies and regulations that have been issued and tell this.

Now, one of the problems in this whole situation is how much further should central level regulating go, which tends to take something off the bargaining table? The Federal agencies themselves issue certain rules and regulations. In many cases this is the direct result of a statutory requirement placed on them by the Congress. Once they issue some of these rules and regulations they have the effect of taking them off the bargaining table for the local people who are bargaining.

So at all three of these tiers, Congress, central executive agencies such as OMB and Civil Service Commission, agency levels, you have involvement in addition to the local level.

Well, one of the things that the Council is considering now is a recommendation providing a mechanism where a union can challenge the agency's regulation as being overly prescriptive, that is having the tendency to unnecessarily restrict the scope of bargaining. The scope of bargaining has been increasing very significantly and we wanted to know really what was in all of these agreements.

Well, with 3,400 different units and so many variables in their conditions of employment and what they're doing, and having none of the types of tools that the management would normally have—

that is, not bargaining on economic items—we wanted to get a handle on what was being negotiated. And the best way was to get all of those agreements and analyze them and find out how broad or how narrow the scope of bargaining is.

We found that the scope of bargaining was far broader than we had been led to believe by looking at a few complaints in isolated areas rather than the rule, and all of that information is available. It can be provided to this committee. We do have some analysis in our background information.

But this is the kind of dilemma that you're faced with in a situation where not only Congress has a piece of the action, the Executive has a piece of the action, the Judiciary has a piece of the action—we're not an income-generating type of organization. We have no economic tools. If I were in the private sector and my organization made a \$10 million profit, I could be darned sure that the employees would come in and want a bigger share of that, and it would be on that basis that you would make a settlement with your workers, their productivity and what they had contributed.

We have no way of measuring productivity versus profits in the Federal service for bargaining on the major economic issues as in the private sector; decisions become political in our sector, political in the sense not only of the parties involved but also the public interest that's involved and the people who pay the taxes.

So we just don't have the type of circumstances for full collective bargaining. What does that mean; who do you bargain with—I mean, as any central agency, are we going to be required to sit down and to work with 3,400 representatives representing the 3,400 units? I'm oversimplifying here and I shouldn't do that because it tends to distort the issue. But the authority of any statutory body I think, in labor relations, should be to balance the interests of the parties in being able to make an objective kind of a decision. I don't think that a statutory body should have the kind of authority that the Council has because you have two people who are members of the Council who hold broad central statutory authority and you could not have that in another board.

Mr. HENDERSON. Thank you very much. I commend you for the statement that you did present and certainly I look forward to your appearance and testimony and question session tomorrow.

Mr. Ford.

Mr. FORD. Thank you very much. I took some courses in undergraduate school about 25 years ago at the conclusion of which I thought I had read much more about the Federal civil service than I ever wanted to read and knew more about it than I would ever want to know, and I'm discovering that I have really had some misconceptions.

One of the problems I have with dealing with your testimony is I don't know where you're coming at me from because you're kind of dancing on the head of a pin in your position. The Civil Service Commission was created out of a very strong public reaction in this country against the executive branch of Government primarily, and theoretically the Civil Service Commission has functioned as protection for Government employees in the public interest against

undue influence and shenanigans from the executive branch and from the legislative branch.

It appears to me that you do a pretty effective job in protecting the public interest and the employees when it comes to the legislative branch, but that over its entire history the Civil Service Commission has had an extremely difficult time in its relationship with the executive branch because after all the executive branch not only has always exercised great control over your activities and policies but in recent years, as succeeding Presidents have become more and more centralized in your activities, it's become more difficult in that role of imposed neutrality that was originally set for you. This is one of the concerns we have about the Executive order approach, no matter who the President might be who is writing the Executive orders, because he, too, is in a difficult position—or his representative in preparing the orders for him—of not really being able to solidly take a stand as to who the prime interests are that they serve.

I'm interested that you draw a distinction and say that in collective bargaining in the public sector there's always the overriding public interest, but that that doesn't exist in the private sector. I think my friends at the head of management in my district would take exception to that, because they consider themselves to be very much aware of the public interest and the public has very direct ways to tell them whether their interest is being met or not in the marketplace.

At the top of page 8 you say :

Labor organizations enjoy long and very important relationships with the Congress. This hearing itself is an example of their impact in the legislative process. Unions in private industry do not lobby their employers for benefits outside and in addition to those negotiated across the table.

Well, it may be true they don't lobby the individual employers, but they do lobby the Congress and the State legislatures for everything from unemployment compensation to the Fair Labor Standards Act at the Federal level. The National Labor Relations Act has amendments proposed to it from time to time. The new pension legislation that we have just passed will arbitrarily determine what kind of a pension plan will meet the Federal standards. The service contract act which we are in the process of amending at the moment has become very important because of the large number of Federal agencies that have contracting out activities.

Your statistics to show how many people belong to unions should not only show the present Federal employees outside of the Post Office but the jobs that were formerly Federal jobs now held by private employees through contracting out and those private employees, in turn, have a very high degree of unionization. There is some variation between different parts of the country because of local conditions, but our hearings in the Labor Committee indicate that they are in the most part represented by organized labor and frequently find themselves in a much better position to be represented as a private employee doing exactly the same job on a Government installation as they were doing, before the contracting out, as a public employee.

Later in your statement, where you say that the complaint you most frequently hear is that public employees are advantaged over private employees, comes as a little bit of a surprise to me. Maybe you could give us some examples—without taking the time now—of what you meant in your statement about the kind of complaints you get that a public employee is advantaged, from an economic standpoint, over a private employee.

You suggest in your statement that the employees coming to the Congress, and the Congress continuing to affect the employee-employer relationship by passing various kinds of statutes, is not really desirable—you then go on later—

Mr. HAMPTON. Mr. Ford, I didn't say it was desirable or undesirable. I just stated it as a fact that they do. I think it's in the public interest that they do this and it's something protected by law that they do.

Mr. FORD. Should they or shouldn't they? That's the point.

Mr. HAMPTON. I think they should.

Mr. FORD. Okay, because later, on page 13, you talk about collective bargaining under the Executive order and how it has produced improvements equalling the general level of benefits in the private economy, including the most highly unionized industries. If anything, we have to contend with criticism that the Federal employee is more equal than his private sector counterpart in economic conditions of employment. So you suggest here that the real reason why the Federal employee has improved and gone ahead of his private counterpart is because of collective bargaining action, not necessarily legislative action.

Then, on page 16, you jump back at us again from the other side—

Mr. BRASCO. Would you excuse me one moment, Bill? Mr. Chairman, will the witnesses be back tomorrow for questions?

Mr. HENDERSON. Yes.

Mr. BRASCO. I have some people in my office whom I must see and I will be back then the first thing tomorrow morning and we will be able to proceed with the questioning then.

Mr. HENDERSON. I anticipate that other questions will run us to 12 o'clock and I'll be glad to let you have the first minutes tomorrow morning to ask any questions of the witnesses.

Mr. BRASCO. Thank you.

Mr. FORD. On page 16, the general burden of your statement at that point is that if we have legislative intervention in the collective bargaining process on a continuing basis—by taking the legislative approach instead of the Executive order approach—that we are in danger of having legislative intervention in matters that would be better left to the collective bargaining process. But then, when you get to page 19, we get to the really basic philosophical problem we have in public employee collective bargaining and you pick out three specific kinds of things that you would find unacceptable in Federal legislation. One would be the union or agency shop; and second is negotiation of pay rates and economic fringes on a fragmented bargaining unit basis. You have spoken several times today of 3,400 separate units. Would your objection to collec-

tive bargaining remain if they had complete bargaining for everything except pay and fringe benefits?

Mr. HAMPTON. Well, what I'm essentially saying here, when you have 3,400 units, it would be necessary to really define the bargaining rights at the local level versus those at the national level.

Mr. FORD. Except when you gave me three things that were wrong with my bill—the three basic things that shouldn't be in the Federal statute—you say negotiation of pay rates and economic fringes on a fragmented bargaining unit basis. Later in your testimony you talk about problems of the numerous units you have and I think you said a few moments ago that you had been making a study and you were surprised at the scope of the agreements covering those 3,400 units.

Mr. HAMPTON. Right.

Mr. FORD. It really hasn't been a well-controlled situation up until now under the Executive order and you're just beginning to discover what's been bargained for and received. Is your principal objection in this legislation to the effect that we would allow negotiation for pay rates and economic fringes or that we would allow negotiations, period, at the unit level?

Mr. HAMPTON. What I was saying, when we first looked at local bargaining agreements, we did this on the basis that there were charges that the scope of bargaining was quite narrow, but what we wanted to find out is how narrow it really was.

We found it was much broader which shows that you can negotiate on many matters at the local level and it still does not have the question of uniformity that is needed on some of the more major policy issues.

Mr. FORD. Isn't that exactly what labor legislation generally does? Isn't that what the National Labor Relations Act says when it sets forth a shopping list of those things that are negotiable and those things that an employer need not negotiate for and not have to negotiate for?

There are three categories. There are things that are optional between the parties. There are things required of the parties. There are things that are prohibited as areas of collective bargaining to the parties. You don't have that same kind of a breakdown in any one place in this Federal service.

Mr. HAMPTON. Well, what I mean here is one of the differences—I'm not an expert on private labor relations system, but that law generally applies to a single employer who may have a widely dispersed situation. What you have in the government is essentially you have 70 employers.

Mr. FORD. Don't make that point because my friends in the building trade and the Teamsters would go right through the roof. The largest single union in the country is the Teamsters. They are the largest union but they have literally thousands and thousands of employers in the building trades. Building tradesmen rarely work for the same employer for a whole year at a time and they function under the same act as an auto worker or a steel worker. We haven't had any trouble with that kind of distinction in the private sector. We have national contracts in steel and national contracts to one

degree or another in communications. The big three contracts, for all intents and purposes, are national contracts, but there are all kinds of local conditions that are thereafter bargained for at the local level and it may be paving the parking lot or illuminating the parking lot to keep people from being mugged—a whole variety of things.

Last year Chevrolet couldn't get their factory started in Ohio because they thought the line was going too fast. That became a local issue, but that works itself out and these people still make a profit and we're having more strikes now throughout all the public sector than we are in the private sector.

What I'm concerned about is when you take these three things and say you can't have them, then you can't have labor-management relations in the same way we have labor-management in the private sector—the union or agency shop, for example. You're just asking for continual grief with the employees and continual backdoor attempts to find the same result and you're going to have the problem that now exists go on forever.

Management in the private sector discovered a long time ago that the union and the management shop, after they once discovered how it worked, was one of the most comfortable adjuncts to labor peace that they ever entered into. You can examine the records from years of testimony by our friends on right-to-work, and you will find most of the big employers in this country want no part of that.

Then when you get to the right to strike you have me really baffled, because all of your employees live in communities and, as a matter of fact, belong to credit unions with all kinds of other government employees. They are spending their social life and a lot of their free time in constant communication with policemen, firemen, nurses, rubbish collectors, bus drivers—you name them—who in every State in this country are going to strike, on a fairly regular basis, and attaining their goals. It just seems unrealistic for anyone charged with responsibility for future stability of the work force in the Federal Government to close their eyes to the fact that this is going on.

It's a phenomena that's not new. It's a phenomena that's been developing very rapidly for over a decade. We'd better anticipate that it's only a question of time before it becomes a common phenomena in the Federal Government.

This committee went through the pain of a postal strike and went through the first instant reaction of the Postmaster General, who said he was going to fire the people who were on strike—until we started telling him what we were hearing around the country—that such action would close every post office in this country.

I don't condone any kind of illegal activity as a way we ought to be running a business. The plain fact is that when we're faced with that kind of massive resistance to a law, it becomes unlivable with that kind of Federal employee. What we were forced to do as a government? We were forced to pretend that the law didn't exist and then overnight try to develop an instant method of bringing the strike to an end. Shouldn't we anticipate this sort of thing for the future and have in place a set of procedures and a book of rules by

which the game should be played? In the private sector, not all strikes are legal; nor are strikes always legally carried out. When a private employee steps across the line, when he in fact begins to do damage as an employee that's beyond a legitimate withholding of labor, there's a whole set of rules that come into play and he is in court and he is in jail. That doesn't happen when public employees strike.

New York put some school teachers in jail and the overall result of that to the entire community is something that's very hard to accept as being good for us. I would hate to see what would happen if we had any major sector of the Federal employees decide that they were just tired of something and go on strike, because all we can do is say it's against the law, and that hasn't worked in the one example we have had.

This committee went to other countries where public employee strikes have gone on and, strangely enough, we discovered—it's a source of some embarrassment to me—that the only two major industrial countries in the world today that have an absolute prohibition against public employment strikes are the Union of Soviet Republics and the United States.

I'm not trying to argue you into support of this legislation, but I would hope that instead of coming at each other with the straight idea that these three elements which I think are essential to collective bargaining can't be in ultimate legislation, that your people and mine and you and I could do some more talking about this. Unless we can get some philosophical understanding, and at least start playing in the same ballpark, we're never going to get to bat. What we will have is a struggle that will be decided on a political basis. That may not be the best way to write Federal collective bargaining legislation.

There are differences in opinion here on this subcommittee between the chairman and I as to some of these items and how they ought to be applied and how broad they ought to be, but I would hope that in examining this legislation you could give us some constructive suggestions about how we could have a workable kind of a situation that looks a little bit more like what's involved in the private sector.

And, having said all that, I want to tell you that I commend you very highly for doing the job you do. It's extremely difficult for any of us, with the little time we have to prepare ourselves, to try to understand what these relationships are. I do hope I can impress you with the fact that a number of us do think that we're caught up in a very dynamic situation that is moving much faster than we are. We are being constantly surprised by the people with whom we speak across the country—the growing militants, the growing sense of frustration, that we encounter, and with what used to be nice, quiet little Government unions. I think we're coming into an era when an Executive order just isn't going to do the job. There's just not that kind of confidence at the moment—or, I would say in the last 8 or 10 years—in having the Executive benevolently set down the rules by which we'll play the game between each other.

There has to be a feeling on the part of those people who are members of the union that the rules of the game were made under some circumstances where neither side was supposedly advantaged by the fellows that wrote the rules.

Mr. HENDERSON. Mr. Chairman, if I may, I want to reserve the time for the minority here and I anticipate we will quit by 12. I know you will want to respond to Mr. Ford's questions and comments and I'll give you a chance in just a minute, but it seems to me that we're faced with one problem that he didn't mention and perhaps a quick answer could be helpful.

Recognizing that I philosophically do disagree with Mr. Ford, let's just take on the no-strike question. If we could be sure of what the congressional policy on that was, and assume for a minute that we could get a vote of the Congress that whatever legislation we would enact would not have or would contain a no-strike provision continuing, would your opposition to the legislation formulated in that be the same as it is in this area of where we don't know what we're going to decide?

In this legislation, for example, if Mr. Ford's view prevailed in the Congress that the legislation would contain the right to strike, I would anticipate that your opposition would certainly be as strong or stronger than it is in your statement. Is that a fair statement?

Mr. HAMPTON. I think we feel very strongly about the question of right to strike, but one of the things that I think the purpose of the hearing is for, and just as Mr. Ford has said, is to really identify the principal issues and consider the various alternatives to solving them.

Now there should be what I call a better balance of the powers at the bargaining table, and you're right that there is an imbalance in a sense now. It can be a "take it or leave it" situation, and the only recourse an employee would have would be an illegal strike. That is not the proper balancing of the powers.

I would hope that we could approach it from the standpoint of thinking in terms of some type of disputes machinery that would move immediately into a key area short of—I mean, so that employees would not be forced to strike in order to assert their demands on an issue which they feel very strongly about because I think that we have an awkward situation that we deal with and we do not want to deprive the citizens of this country of the services of the central Government and I would like to explore and discuss what is an effective mechanism short of this.

But just to say the right to strike without going on into certain conditions of when this would arise and how you would solve them is one that I think we have to be in opposition to. In our earlier discussions we discussed a lot of the issues and recognized the complexity of them, and that's why I point out the 3,400 units and the rights of those and the different configurations of multi-unit bargaining, coalition bargaining that they have in the private sector compared to the various tiers and who sits in the national councils on the broader issues in the Federal sector.

These are just terribly wide-ranging issues. And essentially the Government is made up of 70 different employers, all having certain sets of statutory rights, and this is what we mentioned about the



supersede thing. If we have certain things that are in statute now that are employee rights, if those are struck from the statute, do we immediately go into the question of coming up with a national agreement? And if the Federal Government, whoever happens to represent them, goes there to the bargaining table, what economic tools do they have to achieve the types of things that are necessary for the management to produce a product or accomplish its mission?

These are questions I just think we are—you know, I think we're openminded on them. I think they really need to be debated and I think through these hearings we will probably have identification of a lot of issues and I really think that has to be followed up with a real discussion of all of those issues, particularly impact. Impact is the thing that has to come out and be ascertained.

I don't know what some of these things impact. And you're absolutely right. I was on a needle head here, going back and forth on issues just to raise, in a sense, the frustration of the inability to focus in on how these would be resolved in some new situation. And the comfort you have in the situation that exists today and realizing that what the Congress is saying is we want to move off of that comfort and try to get ourselves out of the mold of what you're living with and envisage what you're going to have to live with is very difficult.

I think we need to spend a lot of time on it and the initial papers which were presented here, some 130 pages of how we view the program, really doesn't come up with any great concrete-type conclusion. I don't think I want us to come up with concrete things because I think we want to have an open mind about this. Because I agree with you. We watch the trends in the public sector and the state and local governments and we see what's happening. We have seen the kinds of reactions you get from the public and we see the dilemma that they are faced with and we know these things are coming.

Mr. HENDERSON. Mr. Chairman, if I may just take a minute, for dialog with my colleague from Michigan, because through the years serving with him on our committee and recognizing his outstanding service on the Education and Labor Committee, I certainly want to recognize that in the earlier labor-management relations in the private sector he is a real expert, one whom I admire tremendously, and any time we're together on an issue or a fight I don't know a better fellow in the House I'd like to have with me.

I realize that on the issues of no-strike or the agency shop we might have very sharp differences, but I would want the record to show and the audience to realize that I think he can and will contribute much to this legislation. Bill, I don't know how we get by our hangups on the point of strike or no-strike.

Mr. FORD. Could I suggest a way? I'm working on an economy pitch for Mr. Gross at the moment. I stumbled across a study that somebody made attacking compulsory arbitration in which he pointed out that in the public sector in those areas in which they turn to compulsory arbitration, they end up with a 1-year generation of economic demands as compared to the private sector where

the strike is the ultimate weapon which has now fallen into a pattern of three-tiered generation of economic demands.

When an employee knows he can make any demand he wants—when he goes to a union meeting knowing that—he calls upon them to make a demand a little differently when he realizes if the demand isn't met he's got to lose his paycheck while they settle the matter. In the public sector, where they have gone the route of compulsory arbitration, he can make a demand every year on the anniversary of the contract and know that while it's being fought out he still goes to work every day and gets a paycheck. It does make some difference in the employees making extraordinary demands. There is a school of thought developing that the right to strike might be the way to put the economic lid on the increasing cost of public employment. As one that's never been impressed too much with that as an ultimate goal, I have stayed away from it, but I'm trying to develop for Mr. Gross that kind of a position.

Mr. HENDERSON. I think I'd like to take just a minute to make two points with regards to my feelings about the no-strike in the public sector and, again, I haven't had great experience at the State or municipal level. Certainly all of my interest has developed in the years here in the Congress and working with the Federal sector. There are two things that give me the greatest concern or convince me to stay with the position of no-strike in the public sector, Bill.

First of all, I feel that we have had some pretty good indications that in communications, in transportation, and some of the other areas of the private sector that are so vital to our people, to say nothing of the possible strikes in public areas such as school teachers, you get a counter-reaction of people against using the tool to strike.

Secondly, I feel that the strike is an essential part of the American way in the private sector, but if the right to strike is granted in the public sector I would be fearful, not about how it might work in the Government, as much as what might be the public reaction and what would happen to the right to strike in the private sector.

I could see somewhere down the way that you would have a reactionary government that would say not only was the right to strike in the postal or government sectors wrong and we're going to repeal the law on that, but we'd have a reaction to the National Labor Act and circumscribe the rights of the American workers.

So those in labor leadership are going to have to decide on that very tough issue and, just speaking personally, Bill, I hope that, as I see the political situation in this Congress, that we will be able to work together and devise the best legislation we possibly could.

Certainly the bill that I worked on, H.R. 10700, would be very different if I knew we were going to have the right to strike, and I'm sure you would agree that starting with your bill that if the decision is made that it would not contain the right to strike that you would be interested in giving attention to some of the other things. So I feel we have set the stage this morning for very meaningful hearings that will answer some real questions.

Now I realize the staff has some questions this morning that we didn't get to, but our time and testimony and the comments of the members have been very fitting for the opening session.

Mr. Chairman, inasmuch as you're going to be back tomorrow, I certainly will advise the members who had to leave, as I did Mr. Brasco, that first thing, what I'd like to do is afford them an opportunity to follow on with specific questions they might have and then we will go right into your planned second day of testimony.

Mr. Ford. Mr. Chairman, I can't be here tomorrow, unfortunately, and I do have some questions that I didn't get to.

Mr. HENDERSON. Since Mr. Ford will not be able to be here tomorrow, we would like to reserve to ourselves the right to, after the session this week and after we have heard from other witnesses, to not only retain the right to ask the Chairman to come back, but we ought to extend to the Chairman of the Civil Service Commission the right to submit further comments later in the hearings, or if you would like to return for a session we certainly are going to try to work as hard as we can and call as many sessions as we can. I have made every effort to get our legislative schedule in as good shape as we can so we can give close attention to this matter and move forward as judiciously and expeditiously as possible on this matter.

Thank you very much for your attendance this morning, Mr. Chairman.

The subcommittee will stand adjourned until tomorrow morning at 10 o'clock.

[Whereupon, at 12:05 p.m., the hearing was adjourned, to be reconvened at 10 a.m., Wednesday, May 22, 1974.]

[As previously ordered, the statement and its attachments, submitted by Chairman Hampton follow:]

STATEMENT SUBMITTED BY HON. ROBERT E. HAMPTON, CHAIRMAN, U.S. CIVIL SERVICE COMMISSION

Mr. Chairman and members of the committee, We appreciate the courtesy you have given the Commission to provide a comprehensive report on the state of labor-management relations in the Executive branch of the Government, and to present our views on labor-management relations legislation pending before your Committee.

This is a unique and privileged occasion to report on where we are in labor-management relations in the Federal service, what kind of program we have, how it evolved, its accomplishments and the challenges it faces, the special characteristics that give it its distinctive structure and quality, and its capacity to adjust to and respond to the current interests and needs of Federal employees, the unions who represent them, and agency managers charged with the accomplishment of agency mission. We welcome the opportunity, occasioned by these hearings on bills such as H.R. 10700, H.R. 13, and H.R. 9784 and others—bills which would fundamentally restructure and reorient the existing Federal labor-management relations program—to examine the Federal experience in the light of the proposals for change.

We believe, that after an examination of the record, you may well conclude with us, that while what we have now is not perfect and needs improvement, it tests out better than any of the proposals that would replace it, and that no demonstrated need has been established to abandon a system that has worked eminently well.

That system, which covers non-supervisory employees in the Executive Branch of the Government and non-appropriated fund activities, excluding the Postal Service, the Foreign Service and certain other specified categories of employees, is based upon Executive Order 11491, as amended. The Order provides a constructive framework for collective bargaining in the Federal Service, which has evolved over the past 12 years through three different Administrations. The present program had its origin in Executive Order 10988, issued by President Kennedy in January 1962. It continued and received endorsement from President Johnson, and it was updated to reflect changes that were deemed to be necessary by Executive Order 11491, issued by Presi-

dent Nixon in 1969, and further amended in 1971. And the program is presently undergoing review by the Federal Labor Relations Council for possible additional revisions to assure its continued, evolutionary adaptation, its effectiveness, and its responsiveness to the interests and needs of all parties concerned—employees, unions, management, and the public.

The Federal labor-relations program is one of the largest in the world, with Federal agencies dealing with unions representing over one million employees in nearly 3500 bargaining units spread all over the world, and covering a tremendously wide diversity of occupations not governmental activities—machinists, clerks, scientists, engineers, teachers, nurses, among others.

While there are many similarities, the Federal program is not the same as that in the private sector, for the Federal Government is unique. To assess its effectiveness we must look beyond comparisons. We must measure its accomplishments in terms of its stated objectives.

We will in this report provide a broad perspective on the Federal labor relations program by discussing and developing an understanding of the program by discussing and developing an understanding of the program principles and accomplishments. The report covers the unique characteristics of the Federal Government as an employer; the state of the program; the program within the total personnel management environment; the deficiencies of major provisions of pending bills; the lack of a demonstrated need for legislation; and the need for a balanced labor-management relations policy for the Government.

In addition, because of the considerable importance of the fundamental issues and the major concerns which need to be addressed (such as the extent to which the Congress will delegate its authority over basic Federal personnel policies to the bargaining tables, the scope of bargainable matters, the right to join or not join a union, authority of a central body, superseding of laws for the Federal service, we will provide a special supplement to this report on these issues and the questions and concerns that have to be considered in formulating policy and administrative mechanisms for labor-management relations in the Federal Service.

We have developed the views expressed in this report by using the experience derived from the unique vantage point of the Commission as the central personnel agency and the center for Executive branch labor relations effort. This assessment is based on information gathered from day-to-day contacts with agency managers, evaluations of agency personnel operations, meetings with agency labor relations and personnel staff, feedback from special surveys and studies of agreement provisions and program implementation by our staff and others, reports of and efforts to resolve problems in program application, meetings and discussions with agency and union officials, and review of reports in journals and the press.

#### THE CLIMATE: BASIC PRINCIPLES, ACCOMPLISHMENTS, PERSPECTIVE OF CURRENT PROGRAM

To begin our analysis of what kind of labor-management relations program we have in the Federal service, let us look first at the principles on which the program is based, and match these against program accomplishments.

##### *Major principles at work in the program*

In making its recommendations leading to Executive Order 10988 of 1962, the Presidential Task Force appointed by President Kennedy recognized the right of Federal employees to deal collectively through unions of their choice on matters of concern to them in their employment, and that a system to accomplish this had to be constructed to accommodate the unique characteristics and mission activities of the Federal Government as an employer. The major principles on which the original Order was based were relevant then and are relevant today. They are:

Federal employees are entitled to the benefits of collective bargaining.  
Government responsibility to the public is paramount.

There should not and need not be any basic conflict between a system of labor-management relations and the Civil Service merit system. The merit system is and should remain the essential basis of the personnel policy of the Federal Government. The principles of entrance into the career service on the basis of open competition, selection on merit and fitness, and advancement on the same basis, together with the full range of legislative and executive poli-

cies and regulations that make up the Civil Service system govern the essential character of each individual's employment. While collective dealing can modify procedures and practices, it cannot vary merit principles. It must operate within their framework.

The right of Federal employees to join organizations dealing collectively with management officials is matched by an equal right to refrain from any such activity. A more significant role for employee organizations within Federal agencies is warranted. The corollary is that they must expect to assume greater responsibility.

There must be no discrimination under the program against employees or union members based on race, color, religion, or national origin.

The right and obligation of public officials to manage effectively must be preserved. The concept of managerial responsibility and the role of managers and supervisors in the public service needs to be strengthened and clarified.

Supporting these basic principles, the twin objectives of (1) "improved well-being of employees", and (2) "efficient administration of the Government" direct the focus of policy, administrative structure, and procedures of the Government's labor relations program. It is ordered by the President, in Executive Order 11491, that to implement the objectives:

"(a) Employees will be provided an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

"(b) The participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

"(c) Subject to law and paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management."

*Major accomplishments under the program*

With these principles and objectives as a solid foundation, the Executive order system has produced an effective labor relations program—it has been a progressive program with solid accomplishments over its relatively short life of twelve years. How well the system is living up to its principles and objectives should not be measured in terms of isolated cases cited by its critics, but rather by over-all progress in day-to-day employee-management relations under the Executive orders:

"It has been established as national policy that Federal employees have the right to join or to refrain from joining a union; that employees have a right to share in the development of personnel policies that affect them on the job; and that in strengthening the relationships between organized employees and managers, the public interest must be fully considered.

"Unions have reported gains in membership, in recognition earned, and in agreements reached. Perhaps the best evidence of the importance of the system to employees is the phenomenal increase in union organization since Executive Order 10988 established the formal labor-management relations system in 1962. As of November 1973, unions have bargaining rights for more than a million (56 percent) of the nearly 2 million non-postal employees. As shown in Attachment "1", there are 3,486 recognized units. Sixty-five percent of these are covered by negotiated agreements, and many others are engaged in negotiations. More significantly, 77 percent of all employees in recognized units are covered by agreements.

"Agreements have become increasingly meaningful and comprehensive with more and more substantive issues included. The effort to open more areas to bargaining where there is no overriding need for Government-wide uniformity is highlighted by the ongoing review of, and recent revisions to, the Federal Personnel Manual. Agencies are now conducting their own "follow-on" review of regulations to identify unnecessary restrictions to negotiability.

"Third-party machinery has been created to deal with unresolved disputes. The Assistant Secretary of Labor for Labor-Management Relations and the Federal Mediation and Conciliation Service have been given strong roles in the Federal program, an Impasse Panel has been created, and the Federal Labor Relations Council exercises general overview.

"Several features of the procedures that govern labor-management relations in the private sector have been incorporated in the Federal program, while those that do not recognize the special role of public service have not.

"Drawing from this progress, we can conclude that the Federal Labor relations program has not created an atmosphere stifling and frustrating unions, but, to the contrary, has created a positive atmosphere where employees can, and do, freely choose their representatives to bargain for them on matters affecting the conditions of their employment. Under this system, union representation (as noted above) has grown in 12 years to an extent far surpassing the rate of growth achieved by unions in the private sector in almost 40 years under the National Labor Relations Act.

"In summary, the Federal program that has evolved is one in which a reasonable balance has been struck between management's ability to manage and employees' rights to have a strong voice in matters that affect them on the job. There have been "horror" stories of differences of opinion or misunderstanding between the parties—such as improper actions, failure to act, negative attitude, and the like. However, if we would be completely honest, these "horror" stories have been rare exceptions to the rule, for the overwhelming number of relationships are positive and productive."

For example, last month at the public hearings on the Executive Order program, spokesmen for the Department of Defense, which accounts for over 665,000 employees or 56 percent of all employees in exclusive bargaining units under the Order, summed it up this way: "It is our view, as the largest employer in Government, that on the whole, the Federal labor-management relations program is operating satisfactorily and that the third parties in general have done a good job—although we have our differences with individual decisions. The program continues to evolve steadily, and most of the problems that inevitably arise from day to day are being resolved. The program has been changing and maturing through an evolutionary process, and we think this is the way it should be."

To show that the Order's over-all objectives are being met and that the dispute-resolution machinery is working well, the Department of Defense introduced these statistics:

During 1973, over 665,000 employees in DoD (63 percent) were participating in the formulation of their working conditions in exclusive bargaining units.

Over 500 agreements were negotiated or renegotiated in Defense last year involving the Mediation Service in only 61 cases, the Impasses Panel in only nine cases and the Council (on negotiability) in only 16 cases. (i.e. most of the negotiations were resolved by the parties directly without a decision on recommendation for settlement from any third-party.)

In 1973, DoD activities were involved in only 47 of the numbered Decisions (including both representation and unfair-labor-practice cases) issued by the Assistant Secretary, only six of which were appealed to the Council by one party or the other.

In grievance cases, arbitrators' awards involving Defense activities since the inception of the program, in only 12 cases were exceptions filed with the Council (five by management, seven by unions), indicating the high rate of acceptance by both parties of the grievance-arbitration process.

This is not to say that no changes in the program are called for—only that they should be approached with great caution, according to the Department of Defense.

In spite of the many accomplishments of the program, we do know that no one has yet developed the perfect model for a labor-management relations program—one that is universally applicable, absolutely fair and equitable, internally logical, externally applicable, absolutely fair and equitable, internally logical, externally consistent with other established institutions, and guaranteed to produce workable solutions for all labor-relations problems. Even though such a model program does not exist, we have fashioned a program suited to the unique condition of employment in the Federal civil service with a view toward striving to be a model program. And with the dynamic nature of labor relations, we have adapted and refined the program to keep pace with changing times and conditions, and indeed, we must have the flexibility inherent in the present system to react to the changing times and conditions.

#### THE SETTING: SPECIAL AND UNIQUE CHARACTERISTICS OF GOVERNMENT AS EMPLOYER

Some critics of the Federal labor-relations program favor, it seems, a wholesale accommodation of public employment practices and policies to collective bargaining as it has evolved in the private sector during the last 40 years.

This is an unrealistic approach, as will be recognized from the following discussion.

The policies and practices which collectively make up the private sector labor-management relations "model" have developed and evolved over the years to meet conditions and to solve problems in private sector labor-management relations. We are attempting in the Federal sector to develop and refine a program which meets the conditions and solves the problems in today's Federal sector where the public interest is of primary concern.

Upon examining some basic characteristics of the Federal public service and analyzing how these characteristics have influenced the development of the Federal labor-management relations program, the imperative of a special labor-management relations program to meet the unique characteristics and needs of Federal employment and Federal labor relations can be better understood.

#### *Environmental factors in the Federal program*

An essential premise of Federal employment is merit, which was legislated by the Congress as the governing principle under the Pendleton Act in 1883 and which has endured ever since. This protection from "spoils" considerations for Federal employees, and through them for the operations of Government, is the basic personnel policy we follow and maintain. Certainly the Federal program has many similarities to labor relations in private industry: the aspirations of working people are much the same everywhere; the day-to-day responsibilities of Government supervisors and managers are not unlike those of their counterparts in private enterprise; and many of the unions representing employees in the Federal service also function in the private sector. However, there are many significant dissimilarities, and these are based on the special characteristics which influence the environment of labor relations in the Federal Government.

*Size and diversity.*—The most obvious characteristic is the size and diversity of the Federal work force.

The program applies to two million employees, in fifty departments and agencies, with thousands of principal offices and installations located all over the world. The fact that the work force is spread throughout the world is not an academic consideration.

Federal agencies have formal dealings with over 85 different labor organizations. They include the craft and industrial unions active in the private sector and unions composed of government employees exclusively.

*Scope of bargaining.*—The legal limitations which are imposed on the scope of bargaining in the Federal sector by "applicable laws" and regulations of appropriate higher authority create significant differences from labor-management relations in the private sector. In fact, one of the major features that distinguish public labor-management relations, as it operates at the Federal level, from labor-management relations, as it is conventionally conceived in private industry, is the fact that union negotiations with management in the Executive departments and agencies are subsidiary and supplemental to the major employee benefits and protections which have been granted and are periodically improved through the legislative process.

The "mandatory" scope of bargaining in the Federal sector under Executive Order 11491, as amended, is described in section 11 as: "personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual, published agency policies and regulations, a national or other controlling agreement at a higher level in the agency, and this Order."

Many of the terms and conditions of employment for Federal employees are determined through or based on legislation, particularly the basic economic items—pay, hours, fringe benefits, and retirement; the major personnel policies—merit staffing, job classification, training, promotion, performance rating, and reduction in force; and the protection of job security through a variety of employee rights of appeal to the Civil Service Commission from actions of their employing agencies. Further, the Executive orders of the President, the standards, policies, and implementing regulations of the Civil Service Commission and the rulings of the Comptroller General add measurably to the body of common ground rules that govern the employment conditions of Federal employees. This has resulted from:

*Congressional relationships.*—In the Federal service, labor organizations have an important influence and direct participation in the legislative process.

They long have testified before the committees of Congress on personnel legislation and have worked closely with committee staffs in offering their version of proposed bills. They hold large-scale rallies in support of legislation beneficial to their members. And they have ready access to committees and Members of Congress to air their complaints and grievances, access which is guaranteed by the Lloyd LaFollette Act of 1912.

*Statutory and regulatory policies and controls.*—This long history of Congressional relationships is responsible, in part, for the extensive coverage by statute of the principal areas of Federal personnel policy and procedure. The basic rules governing hiring, pay, hours, leave, job classification, performance rating, fringe benefits, retirement, and major disciplinary actions in the Federal service are set by law. In most cases, these are implemented by Civil Service Commission regulations—and when drafting such regulations, the Commission consults extensively with labor organizations as well as agency management. Finally, the great size and spread of the principal departments and agencies has brought about departmental personnel policies and procedures which further implement the laws and Commission regulations.

Even though relatively few of the "bread-and-butter" issues are left for bargaining in the Federal sector, this does not mean that there is nothing left for bilateral negotiations between labor organizations and agency management. Using information supplied by the Commission's recently developed Labor Agreement Information Retrieval System (LAIRS), we have catalogued a wide range of substantive areas covered by provisions of Federal negotiated agreements and the frequencies with which they appear. For example:

Over 820,000 non-postal Federal employees are covered by negotiated grievance procedures, most of them providing for binding arbitration.

Almost 590,000 are covered by negotiated disciplinary provisions.

Nearly 718,000 are covered by negotiated promotion provisions.

A more complete rundown of negotiated items is set forth below. Although these matters deal primarily with immediate working conditions on the job, it should not be thought that they are of little importance either to employees or to management. Their importance to employees rests in their direct relevance to on-the-job conditions and in the opportunity for employee participation in shaping policies and practices that affect their day-to-day work life. For management, their importance goes directly to its need to get the work of Government carried out effectively, efficiently and with good morale.

In addition, labor organization representatives serve on statutory bodies which were formed to ensure employee participation in certain pay and fringe benefits areas. These include the Prevailing Rate Advisory Committee, the Federal Employees Pay Council and the Health Benefits and Life Insurance Advisory Committees. In addition, Executive Order 11612 provides for employee organization representation on the Federal Advisory Council on Occupational Safety and Health, established to advise the Secretary of Labor in carrying out a Federal safety program under the Occupational Safety and Health Act of 1970.

The point here is that all the various "personnel policies, practices and matters affecting working conditions" are being dealt with in one form or another. Perhaps the form being utilized in a particular subject area is not the same as in the private sector where the scope of bargaining includes basic pay and overtime; severance pay; Christmas bonuses; pension and welfare plans; profit-sharing plans; merit wage increases; company housing, meals, discounts, and services; length of workday and workweek; work schedules; grievance procedures and arbitration; layoffs; discharges; workloads; vacations and holidays; sick leave; work rules, seniority, promotions, and transfers; compulsory retirement age; union security arrangements; and safety. These matters in fact are also covered in the Federal program, albeit in different forms, containing all of the substance of the private sector agreements.

*Employer attitude toward union organizing.*—Another significant difference between the Federal sector and the private sector is the positive approach the Government, as employer, has taken toward union organizing.

A private employer may, and often does, exercise his right of free speech to oppose union representation of his employees. In fact, this right is protected by section 8(c) of the Taft-Hartley Act which provides: "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."



In contrast, the Federal government has taken a position of neutrality as far as union representation of its employees is concerned, and Government officials do not mount "vote no" campaigns.

Although nothing in the Order expressly prohibits a "vote no" campaign, neither does the Order contain a provision similar to section 8(c) of Taft-Hartley. The policy of management neutrality derives from the preamble to the Order, where the President, speaking as the head of the Executive Branch, has said that "the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment." And it derives from the injunction in section 1 that, "The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights . . . [freely and without fear of penalty or reprisal to form, join, and assist a labor organization or to refrain from any such activity], and that no interference, restraint, coercion, or discrimination is practiced without his agency to encourage or discourage membership in a labor organization." Officials within the Executive branch are naturally expected to adhere to the labor-management policy directed by the Chief Executive.

This policy coupled with easy access to formal recognition and union dues checkoff during the period 1964 to 1970, under Executive Order 10988, undoubtedly accounts in large part for the dramatic growth of union representation strength in the Federal sector at a time when it was relatively stagnant in the private sector.

*"Right to strike".*—There is, of course, no right to strike among employees of the United States Government. But strike activity in the private sector is permitted (as well as regulated) by Federal statutes. In the Federal sector, on the other hand, strikes are prohibited by statute as we believe they should be. In principle we are against the "right to strike" for Federal employees.

There must be continuity of Government operations. But what if, as it is sometimes argued, the particular function is unimportant. Well, if it is not important to some of our citizens or the public welfare, then perhaps it shouldn't be a Government function.

More to the point, however, is that the service is being performed because appropriate authority, elected representatives, has determined it is in the public interest for the Government to perform the service. In the public sector, the forces at work are basically political. Public managers don't lose business during a strike. A strike succeeds to the extent that it hurts the public and, in turn, their political representatives. To permit a group of Federal employees to strike goes far beyond the guarantee that Federal employees, like any other group of American citizens, may petition the Government for redress of their grievances. If Federal employees were able to withhold their services in addition to engaging in the accepted methods of political activity of private interest groups, it could not only result in the reallocation of national resources in their favor but also could leave competing private interest groups at a permanent and substantial disadvantage.

During 1971 the statutory ban against strikes by Federal employees was upheld by a three-judge panel of the U.S. District Court for the District of Columbia, and the decision of the district court was affirmed by a 6-1 vote of the Supreme Court of the United States. The Court held that Federal employees have no constitutional right to strike and that Federal law prohibiting strikes by Federal employees is neither unconstitutionally vague nor overly broad.

The majority opinion of the district court contains a very pertinent analysis of the strike ban which bears repeating:

"Given the fact that there is no constitutional right to strike, it is not irrational or arbitrary for the Government to condition employment on a promise not to withhold labor collectively, and to prohibit strikes by those in public employment, whether because of the prerogatives of the sovereign, some sense of higher obligation associated with public service, to assure the continuing functioning of the Government without interruption, to protect public health and safety or for other reasons. Although plaintiff [the union] argues that the provisions in question are unconstitutionally broad in covering all Government employees regardless of the type or importance of work they do, we hold that it makes no difference whether the jobs performed by certain public employees are regarded as 'essential' or 'non-essential,' or whether similar jobs are performed by workers in private industry who do have the right to strike protected

by statute. Nor is it relevant that some positions in private industry are arguably more affected with a public interest than are some positions in the Government service . . .

"There certainly is no compelling reason to imply the existence of the right to strike from the right to associate and bargain collectively. In the private sphere, the strike is used to equalize bargaining power, but this has universally been held not to be appropriate when its object and purpose can only be to influence the essentially political decisions of government in the allocation of its resources. Congress has an obligation to ensure that the machinery of the Federal government continues to function at all times without interference. Prohibition of strikes by its employees is a reasonable implementation of the obligation."

By and large, this prohibition against the right to strike by Federal employees has proven effective as there have been very few incidents during the program's existence which actually can be termed "strikes".

There were, however, two strike incidents in 1970 which demonstrated the gravity and potential adverse effects on the public of such concerted employee actions. In March of that year, a strike starting among postal workers in New York City had, within a week, spread across the nation and involved approximately 200,000 employees. Mail service was virtually paralyzed in many metropolitan areas and many millions of people were deprived of mail service. Although the strike was ended with the help of a court injunction and the underlying dispute between the Post Office Department and the postal unions was resolved, the cost and impact of the strike on business and the economy was quite severe.

In the same month, a long-standing dispute between the Federal Aviation Administration and the Professional Air Traffic Controllers Organization (PATCO) led to a large-scale "sick-out" involving approximately 25 percent of the nation's air traffic controllers. (This was a repeat of a similar but less extensive incident which occurred in June, 1969.) As in the postal strike, court action was required to end the strike and get the controllers back on the job.

By the strike prohibition Federal employees are denied the bargaining leverage of the threat of strike, but this does not mean that they are relegated to "second-class" status in our nation's work force. The Federal government, as an employer, has no desire to deny to Federal employees the general level of rights and benefits which employees are able to secure through collective bargaining in the private sector. On the contrary, the record is clear that the rights and benefits which Federal employees enjoy are fully comparable to those in the private sector of our economy. Congress has historically provided the basis for employee benefits over which private sector unions customarily strike. We are proud of the enlightened personnel management system we have developed in the Federal government, a system based upon Congressional study and enactment. We believe that it is responsive to the needs of both employees and management.

Even though our Federal personnel management system has developed under circumstances in which employees did not possess the right to strike, they have possessed and used the right to participate in its development. Regardless of what critics might allege about "paternalism" the Federal personnel management system was not developed by a group of "philosopher-kings" and then handed down for employees to enjoy. As pointed out earlier, the basic rights and benefits have been developed through the political process, with Federal unions playing a large part in their development.

Turning more specifically to labor-management negotiations within the context of our existing program, Executive Order 11491 provides a means for resolving negotiation impasses fairly and finally without the need for strikes and lockouts. First, the Order assigns the Federal Mediation and Conciliation Service the responsibility for mediating negotiation disputes. It may proffer its services to assist the parties in reaching agreement and may provide preventive mediation services at other times when needed to improve labor-management relationships.

When a negotiation impasse defies settlement by the parties even after exhausting mediation efforts, the Order provides machinery which we believe will guarantee final settlement of even the toughest negotiation impasse. Operation of that machinery is the responsibility of the Federal Service Impasses Panel. The Panel is composed of seven members appointed by the President from

outside the government. They are persons of high reputation for impartiality and expertise in labor relations, especially in the field of arbitration.

Following initial inquiry into the circumstances surrounding an impasse, the Panel may proceed to fact finding with recommendations as a basis for further negotiation or settlement by the parties. In the event that the parties are unable to settle within twenty days, they must report back to the Panel which may then "take any action it considers necessary to settle an impasse." This means that the Panel may take any of a variety of actions which it believes appropriate to the situation, including directing final and binding arbitration or itself directing a settlement of the unresolved issues. It is believed that this process, with its uncertainty as well as its finality will help reluctant parties see the wisdom of engaging in serious collective bargaining and, in any event, provide an impartial and equitable resolution to the strike or lockout alternative in private sector collective bargaining.

Therefore, because of the major reasons just discussed and others we believe it is eminently clear that labor-management policy in the Federal sector cannot be the same as in the private sector. While we have some things in common with collective bargaining as it is practiced in the private sector, there are basic dissimilarities which require a special labor-management relations program for the Federal service.

#### THE STATE OF THE PROGRAM: EVOLUTION, STATUS, SUCCESS, PROBLEMS, CHALLENGES

Union representation of Federal employees did not begin with the promulgation of an Executive order formalizing the program of labor-management relations. Federal unions can be traced back to the early days of labor organizations in this country. Craft unions existed in Navy shipyards as early as 1830. These unions were active in bringing about improvements in the working conditions of Federal employees. Their efforts, and those of other labor organizations led to the granting of a 10-hour day in 1840, and an 8-hour day for Federal workers in 1868. Another early achievement was the enactment by Congress in 1861 of the first of the prevailing wage statutes.

Other Federal employees followed the lead of the craft workers. In 1869, associations of letter carriers and postal clerks were established. The National Alliance of Postal Employees was founded in 1913, followed in 1917 by the organization of the National Federation of Federal Employees. AFGE came on the scene in 1931, after a split within NFFE over the issue of position classification.

By 1961, according to a study at that time, there were 40 labor organizations with membership among Federal employees and dealing with Federal agencies. Included among these—in addition to those already mentioned—were organizations such as the National Association of Alcohol and Tobacco Tax Field Officers, the National Customs Service Association, the Overseas Education Association, the Organization of Professional Employees of the Department of Agriculture, the International Association of Fire Fighters, the American Federation of Technical Engineers, the International Association of Machinists, the International Brotherhood of Electrical Workers, the American Federation of State, County and Municipal Employees, the Air Traffic Control Association, and the International Printing Pressmen's and Assistants' Union of North America.

Note that these organizations cover the spectrum of various types of labor organizations—craft unions, postal unions, associations, unions based on occupation or employing agency, and industrial-type unions. Many, in fact, most, were affiliated with AFL-CIO, and others were non-affiliated (independent).

The parties to a labor-management relationship were there, and to some extent, on a permissive basis, they were dealing with one another. What was needed was a bridge to span the gap created by the absence of a government-wide system of rights and responsibilities for collective dealings between the unions and the employing agencies. Such a bridge was established for the private sector by the Wagner Act in 1935. It remained for Executive Order 10988 of 1962 to do the same for the Federal service.

While Executive Order 10988 did not bring unions on to the Federal scene, it did much to enhance their status and promote their growth; neither did it establish for the first time the right of Federal employees to join or not join a labor organization. This right was first established in law for postal employees,

following union-restricting action by President Theodore Roosevelt and President Taft, by the Lloyd-LaFollette Act of 1912. This law, which is now incorporated in Title 5 of the U.S. Code, provided in pertinent part as follows:

"(c) Membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing and obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence by any person or groups of persons in said postal service, or the presenting by any such person or groups of persons of any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service.

"(d) The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with."

That Act has remained, except for the laws barring strikes, the only significant Federal statute on union-management relations with broad application to the Federal service. The Postal Reorganization Act of 1970, P.L. 91-375, applicable to the new U.S. Postal Service only, but of great significance to the entire Federal service, provided a statutory basis for collective bargaining in the Postal Service.

The bi-lateral approach to the formulation and implementation of policies and procedures affecting the working life of Federal employees varied greatly among Federal agencies. Some had, like the Tennessee Valley Authority and Bonneville Power Administration, developed comprehensive programs, others had none at all. By the beginning of the 1960's it had been generally recognized that a government-wide policy should be developed in order to provide for uniform, orderly and constructive relationships between labor organizations and management officials.

After his inauguration in 1961, President Kennedy appointed a Presidential Task Force of top-level Government officials, with then Secretary of Labor Arthur J. Goldberg, as Chairman, and then Civil Service Commission Chairman John W. Macy, Jr., as vice-chairman. The Task Force, following a thorough review and hearings on labor relations, made its report and recommendations to the President in November 1961. These recommendations were accepted and were promulgated in January 1961 as Executive Order 10988. A Government-wide labor relations program was thus established.

#### *The first generation Executive order*

Executive Order 10988 was primarily designed as a "start up" program for collective bargaining in the Federal Service. It established a basic pattern for union-management dealings, and contained provisions permitting the continued development of union-management relationships that had been established, and that had proven to be effective. The Executive order, entitled, at that time, "Employee-Management Cooperation in the Federal Service", was basic both in its policy approach and its system structuring. It incorporated the following:

The right of Federal employees to join or to refrain from joining an employee organization was reaffirmed. On the exercise of this right by employees, Federal managers were to be neutral. Federal managers were to demonstrate an affirmative willingness to enter into a collective bargaining relationship with the unions, once the employees had chosen their representatives.

There was a minimum adverse impact on organizations then in existence, resulting from a three-tiered level of recognition based upon the strength of organization representation. (Informal, formal and exclusive.)

The right of management to have limited dealings with veterans, religious and social organizations was preserved.

Merit principles were retained.

Throughout the Order, there was recognition of the differences between the private and public sectors.

Consultation and negotiation, according to level of recognition was mandated.

Advisory arbitration was permissible for settlement of disputes over the interpretation or application of agreement language, and over disputes involving bargaining unit determination.

Non-veteran employees were granted the same rights to appeal in adverse action cases to those provided veterans preference eligibles under Section 14 of the Veterans Preference Act as amended.

A bar was placed on the negotiation of a union security arrangement. However, a measure of union security was introduced later with provision by the Civil Service Commission for union dues withholding. (Application of this recommendation had to be delayed pending clarification of statutory authority for such arrangements.)

Responsibility for implementation of the program was vested in the head of each department and agency, with the Civil Service Commission given a leadership role in providing guidance, management training, and program evaluation, and the Department of Labor was assigned responsibility to assist in the resolution of representation disputes.

Technical services required to implement the order were to be provided by existing agencies.

The unions were reasonably satisfied with Executive Order 10988 at first, calling it a "Magna Carta". The agencies were generally satisfied as well. The first generation Order served its purpose well in providing a bridge between what had been a completely unstructured Federal program and the developments that followed. The unions existing at the time were not only able, by and large, to retain their existence and identity, but also to flourish.

As the program evolved, unions that at first had attained informal and formal recognition, had reasonable opportunity to expand to the point of eligibility for exclusive recognition.

Starting out under a very basic program, the parties had greater opportunity to get to know each other and to establish relationships relatively free of adversary confrontation. Reported union membership soared resulting from both the new status acquired from the Executive Order, and the stability and union security brought about by the adoption of membership dues withholding from the pay rolls of employees choosing this method of dues payment.

The program developed under the Order, with its affirmative approach to collective bargaining by management, afforded unions a green pasture in which they were free to grow in status, membership strength, and employee representation. And grow they did, at a rate far outstripping the union movement in the private sector, to the point where union involvement in the Federal sector is, proportionately, more than twice that in private industry.

For the first few years following the issuance of Executive Order 10988, statistics on Federal union growth was preponderantly among postal workers, who had been well organized even before the Order. However, by mid 1963, 180,000 non-postal workers were in exclusive bargaining units; by 1965, the number had risen to 320,000; and by 1967, 630,000 non-postal Federal employees were exclusively represented by unions, 339,000 blue-collar (Wage Board) and 291,000 salaried white collar (GS) employees. Combined, they represented 29 percent of all non-postal employees of the Executive branch of the Federal government. (Today over one million non-postal executive branch employees are represented by unions.)

Success, and some problems under E.O. 10988, led to demand for change by both unions and management. In response, an Interagency Review Committee was established by President Johnson in 1969, under the leadership of the then Secretary of Labor W. Willard Wirtz and the then Chairman of the Civil Service Commission, John W. Macy, Jr. A draft report was prepared suggesting program changes, but was not adopted as it came at the time of the close of the Johnson Administration.

President Nixon, recognizing the need for Executive Order reform, appointed an Interagency Committee to review and evaluate the program. The findings and recommendations of the 1967 Review Committee were considered and re-examined and to a considerable extent reaffirmed by a new "Interagency Committee on Federal Labor-Management Relations", established in 1969 by President Richard Nixon shortly after his assuming office. Robert E. Hampton, the new Civil Service Commission Chairman, was named Chairman of the Interagency Committee, and serving with him were George P. Shultz, then Secretary of Labor, and Melvin R. Laird, then Secretary of Defense, Winton M. Blount, then Postmaster General, and Robert Mayo, then Director, Bureau of the Budget.

Based on the Committee's recommendations, the President, on October 29, 1969, issued Executive Order 11491. The new Order adjusted the Federal labor-

management relations program to meet the problems that had been identified, to respond, within reason to objections that had been voiced, and to provide an outlet for the greater sophistication and maturity that had developed under the Kennedy order.

*The second generation Executive order*

On January 1, 1970, in principal part, Executive Order 11491 became effective, setting the stage for a new era in labor relations for unions and management in the Federal Service. The new Order maintained the basic principles and objectives of labor-management relations in the Federal service established back in 1962 by Executive Order 10988, but procedures for its administration were evolutionary in nature. It preserved much of the system of relationships that had developed between unions and Federal agencies; yet it contained dramatic and far-reaching changes in the overall labor relations structure.

The key changes were:

The establishment of a central body, the Federal Labor Relations Council, to provide overall direction to the program and to make final decisions on disputed matters;

The provision of third-party processes for resolving representation and unfair labor practice disputes assigned to the Assistant Secretary of Labor for Labor-Management Relations;

The utilization of the Federal Mediation and Conciliation Service to assist in the resolution of negotiation impasses;

The establishment of the Federal Service Impasse Panel as the ultimate authority for the resolution of impasses;

The elimination of multiple levels of recognition.

Other major provisions related to extension of coverage; exclusion of certain categories of security and agency internal audit personnel; special provisions on recognition for guards and labor relations personnel; elimination of the prohibition on negotiations; binding arbitration of employee grievances and disputes arising under the terms of an agreement; prohibition on the use of official time for negotiation of an agreement; changes in procedures for certification of representatives; strengthening standards of conduct and union reporting requirements; revisions to the code of fair labor practices; changes in the scope of negotiation and agreement approval provisions; and the incorporation of procedures for the resolution of negotiability disputes.

Basically, what the new Order did was provide third-party machinery for the resolution of disputes and establish a central authority to set major policy.

In August 1970 the Postal Reorganization Act, PL 91-375 became law. As a result of provisions in that law, the U.S. Postal Service and its employees were exempted from the administrative procedures of the Executive Order and placed within the jurisdiction of the National Labor Relations Board.

*The third (and present) generation Executive order*

At the time President Nixon signed Executive Order 11491 in October 1969, he directed that a review and assessment of operations under the Order be made after one year. The Federal Labor Relations Council initiated such a review with public hearings held on October 1970. Several Members of Congress, top union officials, and key Government officials testified at the hearings or submitted written remarks for the record.

Based upon proposals received from the Council, the President issued Executive Order 11616, amending his earlier Executive Order 11491. It was signed on August 26, 1971 and became effective 90 days later (November 24, 1971). The Council, in making its Report and Recommendations to the President, emphasized that the Order had greatly enhanced the climate for collective bargaining in the Federal service.

The major amendments to Executive Order 11491 were limited in number, but were none-the-less important and significant to program improvement. The changes were directed to increasing the scope of bargaining, perfecting the exclusivity of certified bargaining units and broadening the use of third-party machinery.

Major changes included:

The addition of "Professional" to the list of lawful associations, not qualified as labor organizations, with which an agency may have limited dealings not inconsistent with the rights of recognized labor organizations.

The deletion of that provision of E.O. 11491 that precluded the recognition of an organization that "asserts the right to strike" was deleted based on a

Federal District Court decision involving First Amendment impact on Section 7311, Title 5, U.S.C.

A requirement that all agreements contain a grievance procedure as the exclusive procedure available to the parties and the employees in the units for disputes over the application and interpretation of the agreement.

Negotiated grievance procedures are subject to the following:

An employee's grievance on a matter not covered in the agreement may be presented under any procedure available for the purpose but not under the negotiated procedure.

Matters for which statutory appeals procedures exist are excluded from processing under negotiated grievance procedures.

Complaints filed under the negotiated grievance procedure can have representation only by the exclusive representative.

Negotiated procedures may include arbitration (advisory or binding) limited to interpretation or application of the agreement, which may be invoked only by the agency or the exclusive representative.

The Assistant Secretary of Labor for Labor-Management Relations is authorized to resolve disputes on questions whether a grievance is subject to the negotiated grievance procedure, or whether a grievance under the procedure is subject to arbitration.

The restructuring of Section 19(d) to provide that the processing of unfair labor practice complaints is within the exclusive jurisdiction of the Assistant Secretary of Labor for Labor-Management Relations subject to appeal to the Federal Labor Relations Council.

Furthermore the amended Order provides that:

Decisions under grievance or appeals procedures shall not be construed as unfair labor practice decisions under the order nor as precedents for such decisions.

When a grievance includes an alleged unfair labor practice, it is optional with the aggrieved party whether to seek redress under the grievance procedure or the unfair labor practice procedure. He may not use both procedures.

The modification of Section 20 to eliminate the absolute prohibition of official time for employees when engaged as labor organization representatives in negotiation with agency management. The parties may negotiate on the issues within specified official time limitations.

Elimination of the provision that the costs of dues deductions must be charged to the labor organization. This matter is left to negotiation between the parties.

A revision of Section 25 to provide that the Civil Service Commission in conjunction with the Office of Management and Budget shall establish and maintain a program of policy guidance to agencies on Federal labor-management relations and periodically review the implementation of these policies.

On December 17, 1971, the President made a further change in the program; Executive Order 11636 was issued, placing the Foreign Service agencies under a separate labor-management relations system to take into account the unique conditions of work in the Foreign Service.

This was how the Executive order system for Federal labor relations which exists today evolved—with its tested principles and objectives and mechanisms and procedures, including third parties to assist and guide labor and management in peacefully and constructively formulating and implementing personnel policies and practices that meet their respective and mutual needs and working out differences which inevitably occur in the context of union-management relationships.

#### *The state of the program today*

Federal union-management relations, at the present time, can be characterized as being in a state of maneuver, of testing by the parties of their inherent strength and of the boundaries of the system. The factors relevant to this are: the evolving body of rules based on third-party decisions, with many important areas yet undefined; a slowing in the rate of union representation gains as the saturation point is approached; and indications that there is less awkwardness and indecision and more maturity shown by both parties at the bargaining table.

*Third parties and mediation.*—A most significant feature of the program is the provision for third-party involvement and assistance in addition to services provided by the Federal Mediation and Conciliation Service. Information statements on the roles and work activities of the Federal Labor Relations Council, the Federal Service Impasses Panel, and the Assistant Secretary of Labor for Labor-Management Relations are contained in Attachment "3", "4", and "5". Also

included for your reference in Attachment "2" is a chart showing the relationship of the authorities involved in Executive Order 11491.

As the principal authority in the administration and interpretation of policy under Executive Order 11491, the three-member Federal Labor Relations Council has a dual role: It decides major policy issues and may consider appeals from decisions of the Assistant Secretary, appeals on negotiability issues, exceptions to arbitration awards, and other matters which it deems necessary to effectuate the purposes of the Order. The Council's appellate activity has increased dramatically in its attempt to keep pace with an ever-increasing workload. Thus, in calendar year 1973, it closed nearly three times as many appeals cases as in the previous year.

The number of appeals filed has also grown. In the past year, there was a 22 percent rise over similar filings in calendar year 1972, and in the first 3 months of this year, a 41 percent increase was recorded over the highest quarter during 1973. It is expected that this trend will continue.

While the number of negotiability appeals filed appears to have leveled off, due probably to the large number of determinations made by the Council during the past year, exceptions to arbitration awards and appeals from decisions of the Assistant Secretary have increased. As to the arbitration cases, which showed the greatest increase in Council filings, the upward trend can be expected to continue as the number of bargaining agreements in the Federal sector grows and as the sophistication of the parties increases. Greater public awareness of the Council's appellate role may account, in part, for the increase in the number of appeals filed from decisions of the Assistant Secretary.

The Federal Service Impasses Panel is composed of seven individuals, appointed by the President, whose function is to assist Federal agencies and labor organizations in the resolution of negotiation impasses. The number of cases filed has grown each year from 16 in calendar year 1970 to 30 in 1973. The fact that as of April 15, 1974, 9 cases have already been filed would indicate that the case intake will continue to grow. Of the 105 cases filed with the Panel as of mid-April 1974, 92 have been closed, and 13 are pending. Only 20 disputes, or 19 percent of those cases closed, required a fact finding hearing. Panel Report and Recommendation for settlement following such hearing was issued in 18 of these cases, and of this number, 16 were accepted in full by the parties, and the Panel's recommendations formed the basis for the settlement in the other cases. Of the remaining 72 cases, most were settled informally.

The current trend in impasse issues appears to be away from those which were most prevalent in the past (official time for union negotiations, advisory versus binding arbitration, union representation concerning promotions and awards, and scheduling of work) toward other issues (merit promotions, details and temporary promotions, incorporation of "just and sufficient" cause as a criterion for disciplinary actions, and contract language in which disputes over the interpretation of agency regulations, which have been cited in the agreement, would be subject to the negotiated grievance and arbitration agreement).

In his role under the Executive Order, the Assistant Secretary of Labor for Labor-Management Relations decides questions relating to the appropriate unit for collective bargaining, supervises representation elections and certifies their results, decides unfair labor practice complaints, and in so doing may issue cease and desist orders as well as require such affirmative action as may be deemed necessary to remedy violations found and as he considers appropriate to effectuate the policies of the Order, resolves grievability and arbitrability disputes and administers standards of conduct for unions.

The Assistant Secretary of Labor for Labor-Management Relations (A/SLMR) has closed 4,385 of his 4,962 cases of all types—representation, unfair labor practice, standards of conduct, grievability/arbitrability—while his Labor-Management Services Administration has supervised 2,063 representation elections. (Attachment "5" contains a summary of A/SLMR workload data through March 1974.) Year-to-year comparisons in the number of elections supervised reflect the recent leveling off in union organizing under the Executive Order. And although the number of unfair-labor-practice cases had shown a steady increase from 1971 through 1973, projections based on the first quarter of 1974 indicate there may be fewer such cases this year than last.

The Federal Mediation and Conciliation Service makes available to assist parties negotiating agreements under Executive Order 11491 the use of its mediation services and also furnishes parties upon request panels of arbitrators from its roster of qualified arbitrators, which it maintains.



*The growing body of precedent.*—A substantial body of administrative decisions, providing precedents for the program is being built on representation, conduct and unfair labor practice case decisions of the Assistant Secretary for Labor-Management Relations; negotiability and policy decisions of the Federal Labor Relations Council; fact finding and recommendations on impasses of the Impasses Panel; and grievance arbitration awards. Many of the decisions, built on particular case circumstances, are being generalized as doctrine and direction. The decisions are helpful and necessary, but program direction must also continue to come from the program authorities otherwise a fairly flexible program can be converted into a formal, legalistic structure.

*The extent of union recognition.*—There has been a slowing down in the number of units being certified and recognized. The continued rise in union representation strength of the past 11 years began to taper off in 1972 and continued in 1973. This leveling off can be explained by the fact that almost all the eligible blue-collar workers (84 percent) and about one-half (47 percent) of the white-collar workers are now organized. It would appear that unions have shifted emphasis to negotiating agreements and consolidating their recent gains in representation. Overall, the unions now have bargaining rights for over one million (56 percent) of the close to two million non-postal Federal employees. These data and many of the statistics that follow were derived from the annual survey of union recognition in the Federal service conducted by the Commission's Office of Labor-Management Relations.

The most recent survey was as of November 1973. A comprehensive summary of the results of the survey is contained in Attachment "I".

Included in the major findings of the 1973 survey of union recognition were:

A total of 1,086,361 (56 percent) of non-postal Federal employees are represented by unions, compared to 1,082,587 (55 percent) in 1972. Under Executive Order 11491, which governs the labor relations program, employees have the right to join, or not join, the union. Thus, the number of employees belonging to unions is less than the number covered by exclusive recognition. (The Commission does not maintain records on employee union membership.)

Blue-collar coverage declined in absolute numbers for the second consecutive year (—22,134). However, the decline in the number of blue-collar employees in exclusive units was exceeded by the total decrease in blue-collar employment; as a net result, exclusive recognition rose 1 percent in that segment of the Federal work force. Of all blue-collar employees, 84 percent (404,955) were represented in exclusive units as of November 1973.

White-collar coverage, on the other hand, showed a slight increase both in number covered (a total of 681,406) and percent covered (47 percent). The increase between 1972 and 1973 was 25,908 (2 percent).

#### *Representation among major unions*

American Federation of Government Employees (AFL-CIO) increased its representation by 3,578—to 624,322—in the 12-month period ending November 1973. As of that time, 75 percent of employees represented by AFGE were covered by negotiated agreements.

The National Federation of Federal Employees represented 118,139, an increase of 3,719, and 77 percent of those employees were covered by agreements.

National Treasury Employees Union (formerly, NAIRE), which has represented only white-collar employees, added 3,870 to its total representation. It brought to 50,392 the number of employees represented—of which 96 percent were covered by agreements as of November 1973. Unions showing gains appear to have benefited from the over-all expansion in white-collar employment.

Three unions, whose blue-collar representation approaches or surpasses their white-collar representation, all showed continued declines in number of employees under exclusive recognition: National Association of Government Employees from 82,187 to 75,953; Metal Trades Council (AFL-CIO) from 57,038 to 52,585; International Association of Machinists (AFL-CIO) from 30,585 to 29,552. Losses in representation by NAGE, MTC, and IAM reflect continued cutbacks in total blue-collar employment.

*The bargaining unit structure.*—The fragmentation of the bargaining unit structure which has affected and conditioned the level and substance of Federal union-management dealings remains a problem as indicated by the table below (additional discussion is contained in Attachment "9") which reveals that 53 percent of the units contain less than 100 employees.

As of November 1972, exclusive units numbered 3,392, by November 1973 there were 3,486. The average unit contained 312 employees in 1973; in 1972 the average was 319.

The distribution of Federal recognition units by size was determined by a special survey conducted by the Office of Labor-Management Relations as of April 1974:

Number of employees	Number of units	Percent of total number of units
1 to 10	280	8
11 to 49	996	28
50 to 99	610	17
100 to 499	1,067	31
500 to 999	306	9
1,000 and over	234	7
Total	3,493	100

*Negotiating agreements.*—Exclusive recognition carries with it the right to negotiate with agency management and this may lead to an agreement. Our annual survey of 1973 revealed an unprecedented acceleration in the negotiation of agreements with employing agencies. For example:

Agreements have been negotiated in 335 additional recognition units, an increase of 17 percent over 1972.

Overall, 2,264 or 65 percent of all units are covered by 1,904 agreements. (Some so-called multi-unit agreements cover more than one recognition.)

The number of employees covered by agreements has likewise grown 11 percent to a new high of 837,410, more than 84,000 above last year and encompassing 77 percent of all employees under exclusive recognition. Of the entire non-postal Federal work force, 43 percent were in recognition units covered by negotiated agreements as of November 1973.

Following is a partial listing of what's in these negotiated agreements—their frequency and coverage—extracted from the Commission's LAIRS system. (Additional discussion is provided in Attachment "9.") These illustrate the very broad range and impact of provisions that already have been negotiated under the Executive Order.

Subject	Number of agreements	Number of employees covered
Promotion policy	1,579	717,912
Joint Promotion Committee	112	62,019
Joint Performance Review Committee	92	44,513
Union member(s) on Promotion Panel	197	83,873
Union participation (wage survey)	512	246,087
Joint EEO Committee	436	294,773
Physical examinations	156	104,583
Drug abuse clause	61	50,350
Alcoholism clause	82	65,189
Grievance procedure	1,989	820,104
Discipline policy	1,300	589,274
Pay policy clause	225	118,922
Call-in allowance	543	246,654
Environmental pay	335	189,959
Seniority	481	251,391
Union review (RIF)	300	184,006
Technological displacement	236	139,416
Safety provision	1,521	651,637
Safety clothing	696	350,091
Safety equipment	744	370,566
Joint Safety Committee	886	441,923
Overtime clause	1,579	711,923
Compensatory time	498	229,075
Call-in limitation	150	55,640
Hours guarantee	383	172,920
Excused time (training)	359	217,271
Cafeteria services	190	97,364
Parking	436	318,511
Work equipment	326	153,871
Tools	239	136,668
Joint Suggestion/Awards Committee	367	231,034
Leave (hold union office)	727	382,367
Paid-time allowances (stewards)	668	308,062
Use of space (union)	1,179	578,597
Use of telephone (union)	299	260,597
Mail privilege (union)	311	114,255

*How the negotiating function is working.*—Labor and management representatives are learning to work with each other in a productive bilateral atmosphere, generally devoid of major disagreements or long delays in the negotiating process. This is the profile that emerges from a comprehensive survey of more than 3,000 exclusive bargaining units conducted by the Civil Service Commission in conjunction with the Office of Management and Budget. Unions and agencies were surveyed during a six-month period ending March 15, 1974. Covering nearly nine-tenths of recorded exclusive units—including virtually all units under agreements—it furnishes an overview of how the bargaining function is working under the Executive Order.

This survey was conducted at the request of the Federal Labor Relations Council and the data is being used by the Council in its current general review of the Federal labor-relations program. Attachment "7" provides an overview of the report on the survey. For example:

While the parties generally have taken much longer to get to the table to negotiate an initial basic agreement than is customary in the private sector, once they get there they reach final accord in time periods somewhat comparable to their private-sector counterparts. There is strong indication, however, that the existence of a prior dues-withholding agreement considerably extends the period between certification or recognition and request for negotiations.

More important, they are learning and managing to settle their own problems across the table in their own way, and mostly on their own. With the exception of mediation (344 cases), third parties were involved in only about 80 bargaining situations; they were not resorted to in the remaining 3,000-plus situations.

The survey also tends to show that while official time for union negotiators has been a troublesome issue it was not widespread statistically, and once the parties reached agreement over total amount the union used less than that allotted.

On the negative side, the agency approval process tended to use as much or more time than the parties used at the table to reach agreement. In almost 20 percent of the cases, special problems or circumstances were cited in the approval process.

*Climate of relationships under the present system.*—In May 1973, the Commission's Office of Labor-Management Relations conducted a sample survey of the climate of labor-management relations activity at Federal field installations throughout the country—with similar results. Slightly over 10% of all field activities were included in the survey. Samples were taken of those activities that in the judgment of our field staff are representative of the overall perspective in their assigned areas.

Following is a consensus of our findings (a more detailed discussion is contained in Attachment "6"):

A good case was made for the stability of existing relationships.

Problems in negotiation delays are improving as the parties gain maturity and become more proficient in negotiation techniques.

Delays in headquarters approval and union ratification of agreements continue to exist. Streamlining methods are improving this situation.

More meaningful and substantive agreements are being negotiated as time goes on. Greater understanding of the collective bargaining process is beginning to pay off in better relationships.

Unfair labor practice charges had increased in volume. This is not bad in itself. The orderly processing of such matters is helpful to the parties in their settlement of disputes. There was some evidence that a number of frivolous charges were filed. Unions were testing the parameters of the system.

Disputes over the use of official time for union representatives in negotiations were found to be not as wide spread as had been thought. This was also true of the fee for dues withholding. In over 85% of all negotiation activity the parties had settled for the maximum of the options permitted for negotiations "on the clock," and for the standard two cent fee that had existed prior to amendment of the Order.

Few real problems had surfaced in the field over bargaining unit fragmentation. The multi-unit agreement concept has provided one solution to problems that had existed.

It was difficult to obtain a good "fix" on problems that might exist in negotiability because of the imposition of agency headquarters regulations. As was

to be expected, the opinions of union and management representatives varied in this regard.

Administration of agreements is working well in a majority of the activities sampled.

In large measure, employee problems are being solved through constructive cooperation of the parties.

The largest problem surfaced as a result of this survey is that many first-line supervisors do not relate to their management roles.

Most activities consider that third-party involvement has facilitated their dealings with unions.

There are, in fact, signs of growing maturity on both sides of the bargaining table. Reports from Commission field evaluations indicate that management is gearing up more effectively than in the past to deal with the labor relations process and that there is more expertise at the bargaining table. There is little evidence of serious conflicts—to the point of militant job actions—between the parties. Agency managers have found their counterparts on the union side more skilled and program-wise.

The overall picture, of course, is not uniform; there being great variations from place to place. While there is a greater program understanding, and a more surface acceptance of bilateralism, much yet needs to be done to build the management team and its effectiveness at the bargaining table and in the implementation of agreements.

In addition, there are recent developments that could materially affect the substance of agreements. Included are decisions by the Commission to revise certain regulations in order to remove Federal Personnel Manual impediments to the scope of bargaining; decisions by the Federal Labor Relations Council on negotiability (involving tours of duty, scheduling of shifts, promotion practices, setting academic pay); and decisions by the Assistant Secretary of Labor for Labor-Management Relations on the obligation to bargain during the life of an agreement. It is too early at this stage to assess the impact of these decisions.

#### *Problems, issues, and general review of the program*

Although the existing labor-management relations system is working reasonably well, it is of course, not without friction and problems. Examples of major problems or potential problems, issues, and areas of concern are listed below.

The impact of higher-level agency regulations on what may be bargainable at the subordinate levels, where the bulk of recognitions are and most of the negotiations take place, is a critical issue; it is probably the most fundamental issue affecting the program today.

Agencies have the authority to regulate, but it is evident from the report leading to the issuance of E.O. 11491 that such authority should not be exercised in a manner to frustrate the obligation to bargain. The August 1969 report stated "except where negotiations are conducted at the national level, agencies should increase, where practicable, delegations of authority on personnel policy matters to local managers to permit a wider scope of negotiation." The report also states that: "Agencies should not issue overprescriptive regulations, and should consider exceptions from agency regulations on specific items where both parties request an exception and the agency considers the exception feasible."

Some unions have strongly expressed distrust of agency use of its regulatory authority, alleging that such authority was used to throttle meaningful negotiation at the local level. The unions want the locus of authority to conform to the level of negotiation or vice versa. This is a difficult problem, but legislation provides no easier means of resolution than does working with the Executive Order.

While new provisions of the Order have slowed down fragmentation, they have done little to consolidate existing units or to bring about better matching of locus of bargaining with locus of authority. This has produced great friction at the policy-making levels within unions, particularly those with the greater numerical strength but limited negotiations at the higher rule-making level of agencies. (As noted in the CSC field survey, however, this did not emerge as a major issue at the field activity level.) Nevertheless, there is a need to consider what can be done to alleviate this problems, particularly since permitting local negotiations to override higher level regulations presents additional concerns. This, too, can be handled administratively.

Delays in approval of agreements by agency headquarters. Greater delegations of authority and expedited procedures by agencies are now resulting in more efficient and timely handling.

The definition of and the role of the supervisor continues to be an issue.

Is a supervisor entitled to representation in an agency grievance or appeals procedure by a person who represents the union with exclusive recognition of employees in the unit? There is an apparent need for clarification here.

Is the definition of a supervisor, particularly in the white-collar area, pegged too low? Supervisors with limited authority have difficulty identifying with the management team. In this regard we have seen some improvement in efforts to build the management team, but much remains to be done.

The unresolved legal issue on the authority to make employees whole because of losses incurred due to agreement violations has damaged the credibility of the arbitration process. The answer is to provide legal authority for back pay and other make-whole payments to employees who have sustained losses because of agency violations of negotiated agreements. The Commission is working on proposals to be included in its legislative program (a) to authorize payments and retroactive personnel actions arising from agency violation of law, order, or regulations, and (b) to permit negotiation of grievance procedures which may include binding arbitration on all disciplinary actions, including adverse actions.

The investigation and prosecution of unfair labor practices.

In addition to these major concerns, certain unions have proposed changes that would enlarge the scope of negotiations, establish a full-time central authority, provide access to courts, and include additional union security.

These items and the matter of "make-whole" remedies and negotiation of binding arbitration of adverse actions, would, of course, require legislation. However, the balance of the issues just noted and others are currently being addressed in the general review (started last September) of the Federal sector labor-management relations program being conducted by the Federal Labor Relations Council. Unions, agencies, and other interested parties were asked to suggest issues for consideration, including possible alternative courses of action. Subsequently, the Council announced the areas to receive the central focus of the review, as indicated in Attachment "3." This was followed by the parties submitting position papers and hearings on April 8-10, 1974, to seek amplification of the written submissions and pursue proposals included in the written submissions.

Following a careful review and analysis of the transcript and the parties' written submissions, the Council will prepare a report and whatever recommendations it deems needed for submission to the President.

THE TOTAL ENVIRONMENT: RESPONSIVENESS WITHIN AND OUTSIDE EXECUTIVE ORDER—  
CENTRAL PERSONNEL AUTHORITY, INTEGRATING LABOR RELATIONS

Union-management relationships in the Federal service extend well beyond the formalized labor-management relations structure, they exist within the context of total governmental mechanisms for personnel matters and employee involvement. This is "bilateralism," the Federal form of union-management dealings—extending to the totality of union-management relations, transcending the growing formal scope of bargaining in the Federal service.

*Responsiveness within and outside Executive order*

The Executive Order realistically cannot be viewed as the alpha and omega of union and management rights and responsibilities insofar as establishing personnel policies, practices, and working conditions affecting employees on the job. While the Order is the basic part of the total Federal approach to labor-management relations, there are other structures or systems established to provide meaningful union input into determining policies and practices affecting them and benefits accruing to them.

For example, recent laws have established permanent vehicles for direct union involvement in white-collar and blue-collar pay setting. The Pay Comparability Act of 1970 established a Federal Employees Pay Council consisting of five union representatives to deal with the President's agent on the whole process by which Federal white-collar pay is adjusted each year to keep it comparable with private enterprise pay. This is not collective bargaining per se, but those involved in the process are aware it is a significant step forward

in meaningful consultation. The Comparability Act also provided an Advisory Committee on Federal Pay, composed of three experts from outside the Government. The Advisory Committee meets with the President's agent and with the unions and submits an independent report to the President on the workings of the comparability process.

Likewise, PL 92-392, the so-called Blue-Collar Wage Bill of 1972 establishes a new Prevailing Rate Advisory Committee made up of five union and five agency representatives chaired by an appointee with no other position or responsibilities in government. This replaces the Coordinated Federal Wage System and National Wage Policy Committee which had provided a union voice in pay setting for several years prior to enactment of PL 92-392.

These are special arrangements to deal with the special problems of an Executive branch comprised of many agencies, diverse jobs and different, as well as competing, unions. Both Council and the Committee have specific and direct tie-ins to the labor relations program under Executive Order 11491 since union membership on them is keyed to the extent of exclusive recognition. This recognition which covers more than one million employees and membership and dues payments from an estimated half or more of that number, did not come about without a positive approach to unions and collective bargaining on the part of the Executive branch as expressed in Presidential Executive Orders.

Other examples of union involvement are the Health Benefits and Life Insurance Committees and the Federal Safety Advisory Council. Also, the Commission has long acknowledged the need for employee input, through their representatives, and regularly and extensively has, on its own initiative, consulted unions in the development of government-wide personnel policies.

In this total context, we do not see the Federal approach of bilateralism as narrow, one-sided, or unproductive. We view bilateralism as a constructive force in decision-making, requiring better managers and more accountable managers, and in turn making for better personnel management. And the results we have catalogued have been accomplished within a merit system, and without damage to merit principles. Procedures and practices have been determined bilaterally, but merit principles have remained controlling. What is needed to improve this form of bilateralism can not be provided by merely enacting a law, but instead through understanding, applying and improving this new system of personnel management.

#### *Central personnel authority, integrating labor relations*

As the central personnel agency of and center for labor relations effort in the Executive branch and administrator of the merit system principles, the Commission has a broad range of responsibilities with respect to the statutory and administrative structure of the Federal personnel system. Since labor relations is an integral part of the Federal personnel system, it is in the public interest that the Government through the Commission have the capability to develop and administer, where appropriate, personnel policies and regulations designed to achieve the necessary degree of uniformity and equity in regard to matters common to employees Government-wide or in more than one agency. This is from the standpoint of costs as well as equal treatment for employees similarly situated.

Under Executive Order 11491, as amended, the President assigned to the Civil Service Commission a broad range of responsibilities.

*Policy guidance.*—In conjunction with the Office of Management and Budget, the Commission established and maintains a program for the policy guidance of agencies concerning the Federal labor relations program.

*Technical advice and training.*—The Commission provides technical advice and training for agencies and management officials.

*Program review.*—The Commission continuously reviews the program to assure adherence to its provisions and merit system requirements. The Commission also from time to time reports to the Federal Labor Relations Council on the state of the program and makes recommendations for its improvements.

*Information.*—The Commission, in conjunction with the Department of Labor, develops programs for collection and dissemination of information to agencies, labor organizations and the public.

*Third-party involvement.*—The Commission Chairman has designated the Vice-Chairman of the Commission to assume duties of the Assistant Secretary of Labor when the Department of Labor is a party in matters involving unit determinations, elections, national consultation rights, unfair labor practices and Standards of Conduct cases.

*Dues withholding.*—The Commission issues regulations governing dues withholding procedures with labor organizations and supervisory-management associations.

*Adverse action appeals.*—The Commission prescribes regulations extending to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511-7512 of Title 5 U.S.C.

Performing a vital role in the transition to bilateral labor-management relations, the Civil Service Commission has, for example:

Served as the focal point for policy direction and problem resolution before E.O. 11491 established central authority and third-party machinery.

Established the Office of Labor-Management Relations (OLMR) in 1966 to coordinate and direct CSC and agency-wide attention to changes in Federal personnel management for dealing with the growing unionization of the Federal workforce.

Recruited, trained and assigned Labor Relations Officers in all CSC Regional offices to coordinate field attention to union-management relations.

Provided labor relations training for various levels of the management team throughout the 1960s in the field as well as in Washington culminating with establishment of the Labor Relations Training Center (LRTC) in Washington in 1971.

Evaluated and reported on management performance of its labor relations responsibilities.

Drafted and issued, in conjunction with OMB, and at the direction of the President in 1972, "Guidelines for the Management and Organization of Agency Responsibilities Under the Federal Labor-Management Relations Program." (See Attachment "8.")

Revised parts of the Federal Personnel Manual, opening up the possibility of broadening the scope of bargaining between agencies and unions by the elimination of unnecessary regulations. (This is a continuing effort.)

Developed the Labor Agreement Information Retrieval System (LAIRS), for the purpose of systematically analyzing, storing and retrieving the texts of labor agreements negotiated in the Federal service. Through the application of modern computer technology, supplemented by conventional microfilming techniques, an extensive data base has been created by extracting from each agreement 176 substantive elements of labor relations information. As of February 1, 1974, the LAIRS file contained statistics on 3,493 recognition units, of which 2,422 are covered by negotiated agreements.

Rapid access to the data file is achieved by direct search through a keyboard terminal located at the Civil Service Commission. In addition, comprehensive reports, both statistical and analytical, are generated periodically by specially designed programs.

Complete and reliable Federal labor agreement information is now available for the first time by virtue of this automated technique. Full operation of the LAIRS system, on a trial basis, commenced on April 29, 1974. Information services are now provided to Federal agencies, unions and the general public.

Access to the system, of course, is open to the Committee and its staff. (A concise briefing session has been prepared and can be scheduled and presented upon request.)

But this does not account for all of the Commission's heavy involvement in labor-management relations; much of it is a function of the CSC's pay-setting, personnel policy-making and related authorities in areas of immediate concern to organized labor. Even beyond the broad responsibilities we perform under the Executive Order, the Commission deals with labor organizations through a variety of mechanisms—both formal and informal. On the formal side, as noted above, unions sit with management on the Federal Prevailing Rate Advisory Committee (on blue-collar pay), and participate on the Federal Employees Pay Council (on white-collar pay) and the Health Benefits and Life Insurance Advisory Committees. In a less formal sphere the unions are consulted on other benefits and terms we administer. Thus, the Civil Service Commission's role in labor-management relations has developed into a combination of dual approaches—one inside, the other outside the Executive Order framework. The Commission deals bilaterally in these areas, under these permanent systems, as only a centralized personnel agency—with its broad and comprehensive range of authorities—can.

THE PROPOSALS FOR CHANGE: DEFICIENCIES OF MAJOR PROVISIONS  
OF PENDING BILLS

At the same time the Federal labor relations program is undergoing a general review for possible changes, Congress has before it the question of the need for a legislated labor relations system. As part of this assessment, we have been asked to comment on the various bills.

In general, we found these bills in conflict with the public interest and with the unique characteristics of Federal employment. We believe that they are unsound and would be disruptive to an existing, orderly labor-management relationship. We should like to discuss in an overview fashion, our objections to the major unacceptable features of the bills and their implications. In addition, for your consideration, Attachment "11" compares features of Executive Order 11491, as amended, and H.R. 13, H.R. 9784, and H.R. 10700.

*Application/Coverage.*—All Federal departments and agencies, excluding only the Postal Service would be covered under H.R. 13 and H.R. 9784. This is a most serious failing as such broad-brush coverage does not provide for special problems and separate circumstances such as those applicable to supervisors, managers, and guards; security agency employees; employees in competitive positions in the Legislative and Judicial branches and the District of Columbia, the Library of Congress, the Government Printing Office, and the Federal Reserve System. Also, certain existing labor organizations could be excluded from coverage.

For example, features of these two bills would apply to the Federal Bureau of Investigation, the Central Intelligence Agency and other agencies, offices and bureaus which have as a primary function intelligence, investigative or security work. The authority of agency heads to exclude installations outside the United States would also be revoked. And the bills would cover foreign nationals.

Conflicts of interest are disregarded by the two bills in numerous ways. For example, H.R. 13 replaces the functional definition of supervisory and managerial roles with artificial criteria of income level, span of control and scope of impact. H.R. 9784 would include supervisory and non-supervisory personnel in the same bargaining unit under certain circumstances. Such features would create unacceptable conflict-of-interest conditions. The lack of prohibition on the inclusion of guards with non-guard employees presents another conflict-of-interest question, especially in view of the allowance for strikes in labor disputes under H.R. 9784.

Certain labor organizations presently recognized as exclusive representatives could be excluded from coverage under the two bills because of the definition regarding their primary purpose and national or international stature or affiliation, and from obtaining additional recognitions under the "primary purpose" criterion of H.R. 10700.

*Administration.*—Under all three bills, powerful centralized bodies would be established to administer the respective features. These central bodies would be virtually independent and would supplant the key existing third-party agencies authorized under the Executive Order program. With greater authority concentrated in fewer hands and with the enlarged scope of bargaining, especially under H.R. 13 and H.R. 9784, the bodies would probably have immense impact on the Federal personnel program. Should such central mechanisms be established, the experience and body of precedents developed over the years should not be summarily rejected or ignored.

Careful consideration needs to be given to the range of authority for policy setting by a centralized body. For example, should such a body, without accountability, have power to commit elected officials to the major, unappropriated expenditure of funds, or to matters affecting the mission of agencies? An agency head's responsibility to manage in the accomplishment of assigned mission needs to be carefully defined. To do otherwise, would be to divorce concern for the public interest from those officials held accountable by the electorate.

*Recognition and representation.*—Provisions in H.R. 13 would permit the smallest unit to be certified as an appropriate bargaining unit, creating proliferations of fragmented units. This is based upon a "community of interest" as the single criterion for establishing appropriate bargaining units. Management and the public, of course, also have an interest in the impact of unit structure. The bill ignores (1) the effectiveness of dealings, and (2) the efficiency



of agency operations—an essential part of Government responsibility to the public. These additional criteria under the existing program by Executive Order are intended to avoid excessive fragmentation of bargaining units, while promoting units which are more directly linked to existing personnel authority.

Under all three bills, employees of the central bodies could be represented by labor organizations, thereby becoming a party-at-interest in matters coming before the central body as well as becoming involved in union-management dealings with the central body. Such potential conflicts of interest definitely are not in the public interest.

All three bills propose other means for determining exclusive recognition as well as secret ballot elections. This is an issue currently before the Federal Labor Relations Council.

Labor organizations could also obtain national exclusive recognition to the detriment of any and all other recognized labor organizations, including the abrogation of agreements with other labor organizations, according to provisions in H.R. 13. This would permit one labor organization to obtain a monopoly and create a situation where that labor organization alone could represent all Government employees. This is contrary to the concept of the sanctity of agreements and stability of labor relations based on existing agreements. It also permits by simple devices the establishment of a single, all-powerful union of all Government employees to the exclusion of all others. This would create tremendous potential for adverse impact on the public interest from the vantages of equity, cost and disproportionate combinations of political and collective-bargaining power.

There could be automatic National Consultation Rights for every local exclusive representative, under H.R. 13. Such a device would be untenable. It would require highly elaborate administrative coordination of every agency-level personnel management policy, and a response in writing to justify virtually every management policy.

*Entitlements.*—Agency shop arrangements are included in H.R. 13 and H.R. 9784. This conflicts with the civil service concept that required membership in a labor organization or mandatory payment of equivalent fees as a condition of Federal employment is completely inappropriate and in direct opposition to merit principles, which base continued employment on ability to do the job assigned and which bar use of discriminatory measures in making personnel decisions.

Also all three bills have provisions that grant, as a right, matters that customarily are determined bilaterally. For example, H.R. 13 and H.R. 9784 mandate that agencies withhold dues allotments to exclusive labor organizations, at no cost under H.R. 13; official time for employees representing labor organizations under H.R. 13 and H.R. 9784; binding arbitration of grievances; and H.R. 10700 requires that arbitrators be selected from lists furnished by the Federal Mediation and Conciliation Service. As a practical matter, we believe these issues should be left to the parties for bargaining arrangements that best accommodate to their particular situations.

In addition, under H.R. 9784, in the absence of an exclusive labor organization unrecognized unions would be entitled to dues withholding privileges and use of employer bulletin boards, mailboxes and other communications media. Additionally, such unions would have the right of representation at meetings between an agency and employees concerning grievances, potential grievances, personnel policies and practices and other matters affecting working conditions of employees in the unit. And this would clearly be unworkable.

*Negotiations.*—Virtually all aspects of employment could be opened to negotiation under H.R. 13 and H.R. 9784. Many of the items which are now determined by Congress or delegated to the Civil Service Commission for implementation would be subject to collective bargaining with potential for adverse effects—not only from the standpoint of costs, but also from the standpoint of equal treatment for employees similarly situated. For example, a union with local recognition could negotiate with local management over the entire range of employment issues, which would directly conflict with the equal-pay-for-equal-work policy by authorizing a system that would produce extreme variations of pay and benefits at every local activity where a union represents Federal employees.

The retained rights of management in the public interest, as contained in E.O. 11491, the Postal Reorganization Act, and inherent in various U.S. laws

are absent from H.R. 13 and H.R. 9784. For example, there is no provision, as in the Order, that management officials of an agency would retain the right, in accordance with applicable laws and regulations, to direct employees of the agency, to hire, promote, transfer, assign, and retain employees in positions within the agency, and suspend, demote, discharge, or take other disciplinary action against employees, and the like. Management could be obligated to negotiate on matters with respect to the mission of the agency, its budget, its organization, and the technology of work. Conceivably, public policy as it affects employment—the agency mission—would be negotiable, with negative impact on the functioning of responsible government, in disregard for the will of the Congress.

Also, the grievance definitions and procedures set forth in H.R. 13 and H.R. 9784 are so broad as to appear to encompass many matters which directly by law or indirectly by Civil Service Commission regulations pursuant to law are covered by existing appeals procedures. This, coupled with the provisions giving direct, legal right to binding arbitration of grievances, would turn over to arbitrators many decisions which Congress itself has made or has deemed should be made by other institutions of Government—for example, classification appeals, equal employment opportunity appeals, performance-rating appeals and political interference appeals.

In our review of H.R. 10700, we particularly noted that it substantially presents a more reasonable approach and needed balance to the issue of labor relations legislation in general, and to the rights and interests of the general public, employees, unions, and management in particular, than other bills introduced in the 93rd Congress. While H.R. 10700 incorporates many of the approaches and mechanisms already embodied in Executive Order 11491, it contains a number of unique provisions, which warrant detailed assessment.

For example, posing the most serious problem in H.R. 10700 is the feature establishing a "Federal Labor Relations Board." The Board is to make determinations on personnel management policies and regulations that relate to employees in more than one agency. This provision alone would gravely erode, if not effectively usurp, essential authorities historically delegated by the Congress to Federal agencies and officials for fulfilling their responsibilities. Empowering the Board, as proposed and structured, to determine government-wide policies that affect Federal employees, would seriously cripple management's capability to manage. The decisions would not even be made bilaterally by management representatives authorized to, and accountable for, making them and employee representatives specifically elected to participate in their determination. Instead, these decisions would be made by majority vote of the eleven members of the Board, with the Chairman of the Board resolving ties. This would mean that one person—answerable to himself alone—would have the power to determine a vast range of government-wide policy without responsibility to any authority including the President, the Congress, the Civil Service Commission, or the heads of departments and agencies. Such a concept plainly is not in the public interest.

Furthermore, it would be impracticable to administer the Board arrangement. The wide range and volume of subjects and material that various agencies of the Government would be required to submit for policy determination, the very real prospect of extended quasi-negotiations on many issues, the provision for introduction of issues by labor organizations and the need to operate within the specified timeframe for the consideration of proposals all would contribute to nearly continuous and piece-meal bargaining, periodically interrupted by time constraints unrelated to priority issues, workload or status of negotiations. This process and environment would seriously jeopardize deliberation, decision making, and implementation of government-wide policies. This proposal would permanently damage the capability of the Civil Service Commission to function and to manage as the central personnel agency of the Government, and to administer the inherent Civil Service merit system principles. More important—though just as inescapable—it would disrupt, frustrate and perhaps on some occasions even paralyze the functioning of Government generally, since vital operating regulations of virtually all agencies would be affected directly.

In addition, there are other significant issues and problems stemming from this provision of H.R. 10700. For example, would the Board have authority to determine personnel policies and practices for all employees, including (1) non-represented employees and (2) employees excluded from coverage? If so, what would be the justification for this? If not, what would be the best way to deal with employees not represented by unions or excluded from the coverage under the law?

There are also serious problems inherent in the H.R. 10700 mechanism for negotiation on agency regulations issued by authorities above the level of recognition. For example, this would result in bargaining rights where there is no appropriate bargaining unit and the employees affected have had no opportunity to express their views. In addition, as we understand the concepts involved, it would be extremely impracticable for agencies to implement and administer the provisions. Piecemeal and continuous negotiations could result. This would be unworkable in terms of the capability of management to effectuate central policies where there is a need for uniformity throughout the agency or in major organizational segments. Thus, such an arrangement would be chaotic and impracticable from the vantage points of meaningful and constructive negotiations, labor-management stability in general and sound personnel management practice needed for mission accomplishment in the public service.

*Impasses.*—Negotiation impasses would be dealt with differently under the three bills, and none of the arrangements are acceptable. For example, unions would have the right to strike as an option according to H.R. 9784. Although there would be some limitations on the right to strike, the right to strike against the Federal Government in a labor dispute simply is not compatible with the public's need for uninterrupted continuity of Government functions and national defense concerns, as discussed above.

The impasse procedures of H.R. 13 are contrary to the concept of voluntary collective bargaining; they are the same as compulsory, binding arbitration without the necessary procedural protection. Since there would be easy and automatic access to the Authority, the effectiveness of mediation would become virtually nil. Quick recourse to binding arbitration has been found in stifle efforts of the parties to resolve their own differences and encourage "holding something back" for the arbitrator.

And, conceivably under H.R. 13, a union could strike with impunity if it also follows the impasse procedure, since there is no specific prohibition against the strike while the broad supersedure clause could be interpreted as repealing the "no-strike" law.

To assist the parties in settling impasses, H.R. 10700 provides that at the request of either party, the Authority is required to establish a three-person panel. In our opinion, this mandating of a panel would serve to limit the flexibility of the Authority. The Authority needs more discretion in its consideration of a particular impasse matter. For example, this could include preliminary meetings with the parties, fact finding, use of its own staff, and recommendations to the parties for the resolution of the impasse or the use of a panel to settle the impasse by appropriate action.

Also, as we interpret H.R. 10700, the action of an *ad hoc* panel is final and not subject to further review. Except for negotiability questions it appears that the Authority could not review a panel's decision on an impasse concerning major policy issues. For program integrity and effectiveness, we believe that such review should be available to the Authority as the central body responsible for administering the functions and purposes of the Act. Furthermore, there could well be provisions for checks and balances on actions and decision of the Authority when major policy matters requiring the oversight of the Congress and the highest levels of the executive branch are concerned.

*Unfair labor practices.*—An independent category of unfair labor practices for any "person," is contained in H.R. 13. This concept goes beyond all known labor relations law by permitting the Authority to require action against supervisors and managers, rather than the agency itself. Such a provision creates potent disincentive to initiative by an individual manager or supervisor in any situation of uncertainty involving personnel administration.

Also, in H.R. 13, it is not designated an unfair labor practice for unions to call or participate in a strike, slowdown or picketing against any Federal activity. Arguably, a strike would at most be an indirect unfair labor practice for refusal to comply with the impasses procedure of the bill. There would be no effective sanction against an actual strike.

H.R. 9784 also fails to make it an unfair labor practice for a union to call or participate in strikes and related incidents; or to coerce, attempt to coerce, or discipline, fine, or to take other economic sanction against members of the union as punishment or reprisal for, or for the purpose of hindering or impeding their work performance, their productivity or the discharge of their duties as employees of the United States.

Without such strictures there would be no effective sanction against unfair union actions. This would substantially weaken existing and conventional standards for responsible unionism.

*Standards of conduct.*—H.R. 13 establishes for unions only a general requirement to maintain democratic procedures, prohibit conflicts of interest and maintain fiscal integrity, and H.R. 9784 fails to include even that. Unions in the current Federal program are subject to standards of conduct and reporting requirements similar to the Landrum-Griffin Act for the private sector. These bills would release unions from much of this responsibility and remove any obligation for demonstrated compliance with stated standards.

*Supersedure.*—All previous statutes and Executive orders concerning the same subject matter or inconsistent with provisions of the bill could be superseded, according to H.R. 13 and H.R. 9748. That raises serious questions as to the extent to which civil service laws such as all of Title 5, U.S.C. may be overridden. It also raises questions concerning the degree to which Congressional authority and determination could be affected in areas such as pay, benefits and classification. In their present form, the supersedure clauses appear to open to negotiation many areas presently subject to Congressional action. For example, would two separate retirement, leave, etc., systems evolve, one for unit members and another for non-unit members? Would different agencies and/or installations negotiate different leave or insurance programs? Would supersedure be selective? If not, who would determine the criteria and which acts would be replaced and which would not? These are examples of questions which the bills fail to answer.

Because of the reasons stated above, and others, we, therefore, recommend against enactment of H.R. 13, H.R. 9784, and H.R. 10700.

THE CONCLUSIONS: NO DEMONSTRATED NEED FOR LEGISLATION—  
NEED FOR A BALANCED PHILOSOPHY

*No demonstrated need for legislation*

There is no demonstrated need for legislated labor relations program, particularly so comprehensive a program as discussed above. Those who would copy the private sector should consider the troubled conditions existing in the 1930's under which the National Labor Relations Act—a law to provide industrial peace—was enacted. The purpose of the NLRA is in sharp contrast with that stated in the Executive Order—an order “to facilitate improved employee performance and efficiency”; one concerned with employee well-being and one which favors improved participation of employees “through the maintenance of constructive and cooperative relationships between labor organizations and management officials.”

Each year, the NLRB directs private sector employers to reinstate thousands of employees who were terminated because they formed, joined, or assisted a union. The Federal program, on the other hand, requires management neutrality in employees' selection of a union; management is not to express its views on the “advantages or disadvantages” of unionization.

Further analysis of today's Federal sector labor relations environment as compared to that which existed in the private sector and led to enactment of the NLRA in 1935 reveals that:

Wages and fringe benefits under the multi-tiered Federal personnel structure are comparable to those of the private sector. This view was most recently confirmed by the Commission's December 1973 study of benefit programs of 25 leading employers, summarized in Attachment “10.” That the Federal sector is twice as heavily organized as the private sector argues for continuing under the present system—unless success is to be viewed as a reason for change, hardly a tenable proposition.

The program for exclusive recognition and bilateral setting of personnel policies is functioning reasonably well. There have been many more “successes” issued by the Federal Service Impasses Panel in four years. Many hundreds of than “failures.” In only 18 cases were fact-finding reports and recommendations successful negotiations have been concluded with no need for third-party intervention. Of over 3,000 bargaining situations surveyed in the CSC/OMB study (discussed previously), only 16% involved mediation or third parties (FMCS-344, FSIP-54, FLRC-23, A/SLMR-6).

Of course, this does not mean that the program is perfect. There are problems, many minor, but some major, as discussed above. Many of these can be dealt with through revisions to the Executive Order or by limited legislation.

Some issues have been raised which we expect would be of major interest to the Congress. These are: Union or agency shop; all-powerful central labor relations authority; negotiations on wages and fringe benefits that could result in lack of uniformity, lack of equal-pay-for-equal-work; and right to strike.

In addition because the Federal program is governed by Executive Order we have a framework that has given us the flexibility, versatility, and accommodation not found under legislation in the private sector.

In 38 years, the National Labor Relations Act has been revised substantially just twice—generally in 1947 when it took a Congressional override of a Presidential veto to do it, and on reporting and disclosure alone in 1959 when the major change was a requirement for reporting and disclosure, essentially by unions.

In 47 years, the Railway Labor Act has been changed substantially only once—in 1936 to extend its coverage to air carriers.

In just 12 years, the Executive Order has gone through three revisions, and a general review of the program is underway.

Thus, the record of the Federal experience in labor relations clearly shows no demonstrated need for a legislated program. Rather, it confirms that the Executive Order approach is operating successfully and that it should be continued—in a progressively modified and improved form.

#### *Need for a balanced philosophy*

Under the Federal program that has evolved, a reasonable balance has been struck between management's ability to manage and employees' rights to have a strong voice in matters that affect them on the job. The need for some very special thinking about the requirement to achieve a sensible, rational balance between union and public employer interests within the unique environment of the public service is pointed up by many of the features of the bills discussed above. Among the factors to be considered are the budgetary process, the impact of collective bargaining agreements on taxation, the expression of the public will in personnel matters, legislative enactments, the monopoly character of much of the activities of Government, and the need for uninterrupted public service. These do tend to limit the scope, as well as the acceptability of bargainable matters; and such considerations are vitally necessary in the public interest.

Public policy demands that the performance of such governmental functions not be hampered by any particular group in the interests of its members. The public interest must be the prevailing interest in our society. Under our economic system a private firm belongs to its stockholders; the Federal Government belongs to all the people and therefore must be responsive to the will and the needs of all the people.

The public has always had a proprietary interest in the public service and its confidence in that service is something we dare not lose sight of. Efficiency, costs, performance, mission accomplishment, management's capacity to make essential decisions and to manage—have to be accounted for to the public.

After all, the very premise of Government is that it exists to serve the people, not the employees or public managers or unions. Put in another context, a system of labor-relations is not devised for the purpose of benefitting employees per se, or employers or unions. Rather, a labor-relations system is, or should be, a means for providing employee input in personnel policy decision-making through their chosen representatives. Such a system, to be truly effective, and in the public interest, must provide for employee dignity and well-being, protection from arbitrary decisions, and maintenance of management's ability to carry out its assigned mission—all with the overriding objectives of high standards of performance and efficient, effective administration of Government.

Over all, the record is clear. The Executive Order program is conducive to employee well-being and efficient administration of Government. It is meeting the problems and challenges it's been designed to resolve. It is adjusting to change in an orderly and timely manner. It is workable, viable, versatile.

Before abandoning this system, we must satisfy ourselves that there is a factually demonstrated need for a whole new program and that the new program itself would provide us with a better, more balanced approach. Above all, we must first pay very careful and thoughtful consideration to the fundamental issues that are involved. (Our concerns in some of the most important of these areas are outlined in our supplemental submissions.)

[The 11 attachments to the statement follow:]

ATTACHMENT 1

U. S. CIVIL SERVICE COMMISSION,  
Washington, D.C., May 7, 1974.

Bulletin No. 711-30

Subject: Analysis of Data and Report on Union Recognition in the Federal Service.

To: Heads of Agencies and Independent Establishments.

This bulletin contains graphs, charts, and tables presenting a summary analysis highlighting the statistics on employees covered by exclusive recognition and negotiated agreements in the Federal Service, and the changes in the extent of recognition from November 1972 to November 1973. The report is based on information furnished to the Civil Service Commission by government agencies.

The principal finding is that agreements have been negotiated in 335 additional recognition units, an increase of 17 percent over 1972. Overall, 2,264 or 65 percent of all units are covered by 1,904 agreements as compared to 1,929 or 57 percent of units covered by 1,694 agreements in 1972. (Some multi-unit agreements cover more than one recognition). The number of employees covered by agreements has likewise grown to a new high of 837,410 (43 percent of the total non-postal workforce), an increase of more than 84,000.

There are 3,486 exclusive units of recognition, representing a net gain of 94 units. Exclusive recognitions cover 84 percent of wage system employees and 47 percent of General Schedule or equivalent employees. Comparable figures for November 1972 were 83 percent wage system and 46 percent General Schedule.

Fifty-six percent (1,086,861) of executive branch employees (excluding the Postal Service) are represented by unions holding exclusive recognition rights in Federal agencies compared to fifty-five percent (1,082,587) in 1972.

BERNARD ROSEN,  
*Executive Director.*

Attachment.

Attachment to Btn. No. 711-30

STATISTICAL REPORT

Graphs, charts, and tables in this report provide statistics on exclusive recognitions and agreements granted and negotiated by Federal agencies under the provisions of Executive Order 11491—Labor-Management Relations in the Federal Service and under the former Executive Order 10988—Employee-Management Cooperation in the Federal Service. The statistics are based on information reported to the Civil Service Commission by Federal departments and agencies as of November 1973.

The report covers Federal employees in the Executive Branch, government-wide, excluding the U.S. Postal Service, FBI, NSA, and CIA, and foreign nationals employed outside of the United States. The statistics include recognitions and agreements in the Tennessee Valley Authority and in certain activities of the Department of the Interior and the Department of Transportation which predate Executive Order 10988.

Executive Order 11491, signed by the President on October 29, 1969, became effective on January 1, 1970, except sections 7(f) and 8 which became effective on the date of signing, October 29, 1969. Executive Order 11616, amending Executive Order 11491, was signed by the President on August 26, 1971, and became effective on November 24, 1971.

*Definitions of terms and abbreviations*

Agency—Department or agency of the Executive Branch.

Union—Union, employee organization, or association granted exclusive recognition under the provisions of Executive Order 10988 or Executive Order 11491.

**Exclusive**—Exclusive recognition granted by an agency to a union.

**Exclusive Unit**—The grouping of employees within an agency, activity, or installation for the purposes of exclusive recognition and representation.

**Agreement**—Is a document which sets forth the terms and conditions of employment negotiated by a union and an agency under the provisions of Executive Order 10988 or of Executive Order 11491. An agreement providing for union dues withholding is not an agreement for the purpose of this report.

**Multi-unit Agreement**—An agreement which is applicable to more than one exclusive unit.

**'Wage'**—Wage system employees, i.e., trades, labor and other employees paid on a prevailing rate basis.

**'GS'**—General Schedule employees and those in similar occupations.

**'Prof'**—General Schedule employees designated as professional.

**'Other GS'**—General Schedule employees and those in similar occupations other than professional.

#### NOTES

All percentages appearing in this report have been rounded off to the nearest whole number and are not shown if less than one half of one percent.

The charts provide a comparison of the status of union representation of Federal employees as of November 1978 and November 1972.

In table A, the term 'number' appearing under the heading 'Employees in Exclusive Units' refers to the total number of employees in each agency covered under exclusive recognitions. The corresponding percentages are based on total employment in each agency, and those listed under '%W' and '%GS' are based on agency employment figures for each category.

In table B, the term 'number' appearing under the heading 'Employees in Exclusive Units' refers to the total number of Federal Service employees covered under exclusive recognitions by union. The corresponding percentages are based on total Federal Service employment, and those listed under '%W' and '%GS' are based on total employment figures for each category.

DATA CONTAINED IN THIS REPORT HAS BEEN COMPILED FROM INFORMATION SUBMITTED BY THE FOLLOWING DEPARTMENTS AND AGENCIES

**Executive Office of the President:**

Office of Economic Opportunity

**Executive Departments:**

Department of State

Agency for International Development

Department of the Treasury

Department of Defense:

Office of the Secretary

Department of the Army

Department of the Navy

Department of the Air Force

Other Defense Agencies

Defense Nuclear Agency

Defense Contract Audit Agency

Defense Mapping Agency

Defense Supply Agency

National Guard Bureau

Department of Justice

Department of the Interior

Department of Agriculture

Department of Commerce

Department of Labor

Department of Health, Education, and Welfare

Department of Housing and Urban Development

Department of Transportation

**Agencies:**

Atomic Energy Commission

U.S. Commission on Civil Rights

Environmental Protection Agency

Equal Employment Opportunity

Commission

Federal Communications Commission

Federal Home Loan Board

Federal Power Commission

General Services Administration

Interstate Commerce Commission

National Aeronautics and Space

Administration

National Capital Housing Authority

National Labor Relations Board

Overseas Private Investment

Corporation

Railroad Retirement Board

Renegotiation Board

Securities and Exchange Commission

Selective Service System

Small Business Administration

Smithsonian Institution

National Gallery of Art

Tennessee Valley Authority

United States Civil Service

Commission

United States Information Agency

United States Soldiers' Home

United States Tariff Commission

Veterans Administration

*Commonly used abbreviations of federations and national and international unions and associations*

Abbreviation:	Name of union or association
AAE-----	Aeronautical Examiners; National Association of (Ind).
ACT-----	Association of Civilian Technicians (Ind).
AFGE-----	Government Employees; American Federation of (AFL-CIO).
AFT-----	Teachers, American Federation of (AFL-CIO).
ANA-----	American Nurses Association (Ind).
APCA-----	Aeronautical Production Controlmen Association (Ind).
APWU-----	American Postal Workers Union (AFL-CIO).
	APWU—Clerk Craft.
	APWU—Maintenance Craft.
	APWU—Motor Vehicle Service Craft.
	APWU—Special Delivery Messenger Craft.
BBF-----	Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; International Brotherhood of (AFL-CIO).
BPAT-----	Painters and Allied Trades; International Brotherhood of (AFL-CIO).
BRASC-----	Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of (AFL-CIO).
BRC-----	Railway Carmen of America; Brotherhood of (AFL-CIO).
CJA-----	Carpenters and Joiners of America; United Brotherhood of (AFL-CIO).
FOP-----	Police, Fraternal Order of (Ind).
FPQI-----	Plant Quarantine Inspectors National Association; Federal (Ind).
GAIU-----	Graphic Arts International Union (AFL-CIO).
IAFF-----	Fire Fighters; International Association of (AFL-CIO).
IAM-----	Machinists and Aerospace Workers; International Association of (AFL-CIO).
IAS-----	Siderographers; International Association of (AFL-CIO).
IATC-----	Tool Craftsmen; International Association of (Ind).
IBEW-----	Electrical Workers; International Brotherhood of (AFL-CIO).
IBFO-----	Firemen and Oilers; International Brotherhood of (AFL-CIO).
ICW-----	Chemical Workers Union; International (AFL-CIO).
IFFP-----	International Federation of Federal Police (Ind).
IFPTE-----	Professional and Technical Employees; International Federation of (AFL-CIO).
IPPA-----	Printing Pressmen and Assistants Union of North America; International (AFL-CIO).
ITU-----	Typographical Union; International (AFL-CIO).
IUOE-----	Engineers; International Union of Operating (AFL-CIO).
LIUNA-----	Laborers International Union of North America (AFL-CIO).
MEBA-----	Marine Engineers Beneficial Association; National (AFL-CIO).
MMP-----	Masters, Mates and Pilots; International Organization of, International Marine Division of ILA (AFL-CIO).
MTC-----	Metal Trades Council (AFL-CIO).
NAATA-----	National Army Air Technicians Association, Affiliate of IUE (AFL-CIO).
NAATS-----	National Association of Air Traffic Specialists (Ind).
NABET-----	Broadcast Employees and Technicians; National Association of (AFL-CIO).
NAGE-----	Government Employees; National Association of (Ind).



*Commonly used abbreviations of federations and national and international unions and associations—Continued*

Abbreviation :	Name of union or association
NAGI.....	Government Inspectors, National Association of (Ind)
NALC.....	Letter Carriers of the United States of America; National Association of (AFL-CIO).
NAPEP.....	Planners, Estimators, and Progressmen; National Association of (Ind).
NAPFE.....	Postal and Federal Employees; National Alliance of (Ind).
NCSA.....	Customs Service Association; National (Ind).
NEA.....	National Education Association (Ind)—NEA Overseas Education Association (OEA).
NFFE.....	Federal Employees; National Federation of (Ind).
NLRBP.....	National Labor Relations Board Professional Association (Ind).
NLRBU.....	National Labor Relations Board Union (Ind).
NMU.....	Maritime Union of America; National (AFL-CIO).
NTEU <sup>2</sup> .....	National Treasury Employees Union (Ind).
NUCO.....	National Union of Compliance Officers (Ind).
OAA.....	Operations Analysts Association; National (Ind).
OCAW.....	Oil, Chemical and Atomic Workers International Union (AFL-CIO).
OPEIU.....	Office and Professional Employees International Union (AFL-CIO).
PATCO.....	Professional Air Traffic Controllers Organization, Affiliate of MEBA (AFL-CIO).
PML.....	Pattern Makers League of North America (AFL-CIO).
POMH.....	Post Office Mail Handlers, Watchmen, Messengers and Group Leaders; National Association of, A division of LIUNA (AFL-CIO).
POPA.....	Patent Office Professional Association (Ind).
PPDSE.....	Plant Printers, Die Stampers and Engravers Union of North America; International (AFL-CIO).
PPF.....	Plumbing and Pipe Fitting Industry of the United States and Canada; United Association of Journeymen and Apprentices of the AFL-CIO.
RCIA.....	Retail Clerks International Association (AFL-CIO).
RLCA.....	Letter Carriers Association; National Rural (Ind).
SCME.....	State, County, and Municipal Employees; American Federation of (AFL-CIO).
SEIU.....	Service Employees International Union (AFL-CIO).
SIU.....	Seafarers International Union of North America (AFL-CIO).
SMW.....	Sheet Metal Workers International Association (AFL-CIO).
TDA.....	Train Dispatchers Association; American (AFL-CIO).
TRSOC.....	Trademark Society, Inc. (Ind).
UTU.....	United Transportation Union (AFL-CIO).
UTW.....	United Telegraph Workers Union (AFL-CIO).

Councils and directly affiliated locals of AFL-CIO:

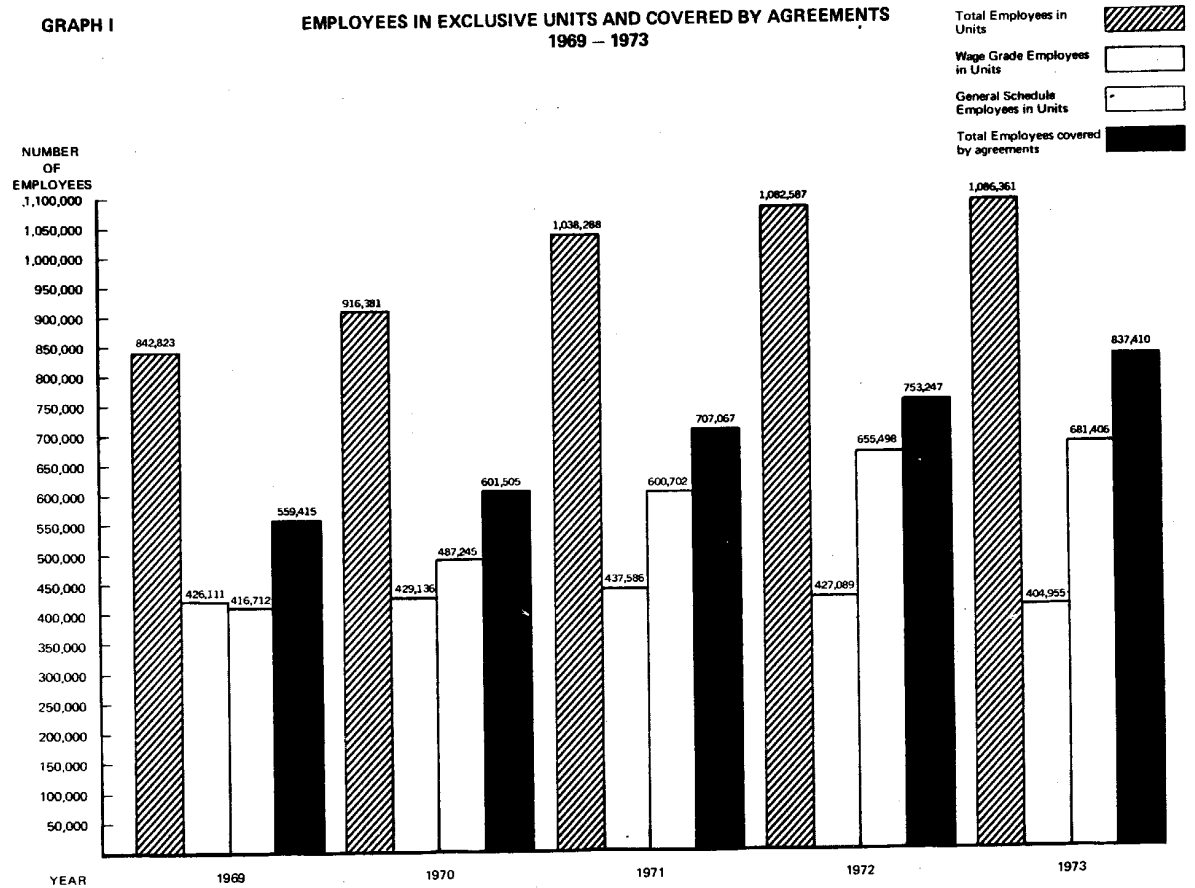
CBTC.....	Columbia Basin Trades Council.
CPTC.....	Columbia Power Trades Council.
DATU.....	Truckers Directly Affiliated Union.
ECNS.....	Employees' Council of the USMV North Star III.
TVSE.....	TVA Public Safety Service Employees' Directly Affiliated Union No. 2033.
TVTLC.....	Tennessee Valley Trades and Labor Council.

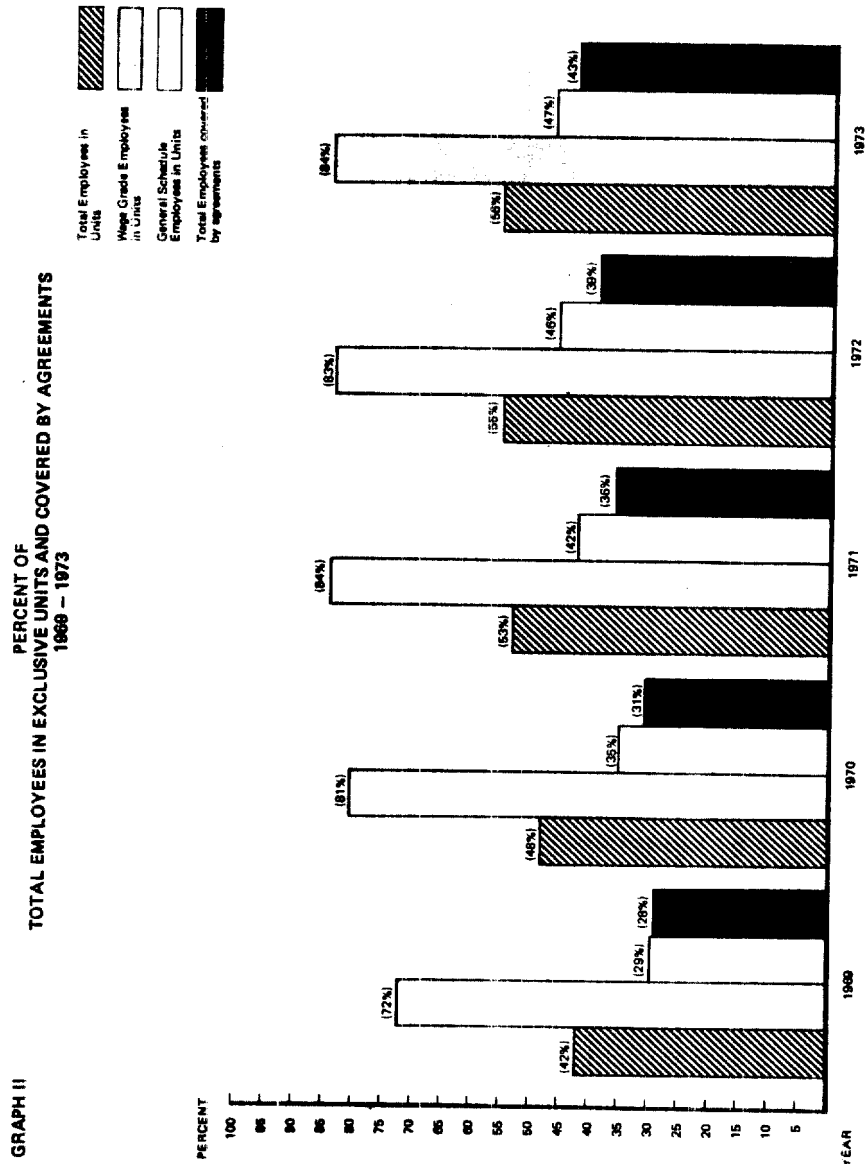
<sup>1</sup> Formerly AFTE.  
<sup>2</sup> Formerly NAIRE.

NOTE.—The abbreviations listed are not necessarily the official ones for these organizations, but are those used in this report and elsewhere.

LOCAL INDEPENDENT UNIONS

Alaska Fisherman's Union.  
Executive Committee of Planners and Estimators, Progressmen, and Assistants.  
Educational Secretaries of the Nation's Capitol.  
Federal Employees Council, Picatinny Arsenal, N.J.  
McClellan Employees for Equality.  
Methods and Standards Analysts Association.  
National Government Employees Union.  
Navy Civilian Professional Association.  
Organization of Contract Administration Engineers.  
Policemen's Association of the District of Columbia.  
Professional Association of the Interstate Commerce Commission.  
Seattle Center Controllers Union.  
Technical Skills Association.  
TVA Engineers Association.  
United Police and Security Association.





UNION RECOGNITION IN THE FEDERAL GOVERNMENT,<sup>1</sup> NOVEMBER 1973 AND NOVEMBER 1972

	1973	1972	Change/percent
I. Employees covered by exclusive recognitions, executive branch totals:			
Total covered.....	1,086,361	1,082,587	*+3,774
Wage system.....	404,955	427,089	-22,134(-5)
General schedule.....	681,406	655,498	+25,908(+4)
II. Employees covered by exclusive recognitions, by major agency: <sup>2</sup>			
1. Army.....	185,192	195,412	-10,220(-5)
2. Navy.....	179,515	192,659	-13,144(-7)
3. Air Force.....	179,468	181,632	-2,164(-1)
4. Veterans' Administration.....	126,455	120,344	+6,111(+5)
5. Treasury.....	69,741	64,327	+5,414(+8)
6. Health, Education, and Welfare.....	69,345	59,503	+9,842(+17)
7. Defense Supply Agency.....	36,578	37,309	-731(-2)
8. Transportation.....	35,345	34,532	+813(+2)
9. National Guard Bureau.....	29,051	28,986	+65(+)
10. Interior.....	23,549	23,164	+385(+2)
11. General Services Administration.....	22,354	21,806	+548(+3)
12. Tennessee Valley Authority.....	21,895	22,550	-655(-3)
13. Agriculture.....	21,803	19,778	+2,025(+10)

\*Change is less than 1 percent.

<sup>1</sup> Data extracted from the forthcoming November 1973 edition of the Civil Service Commission publication "UNION RECOGNITION IN THE FEDERAL GOVERNMENT." Postal Service data are excluded unless otherwise indicated.

<sup>2</sup> An agency in which the number of employees in exclusive recognition units exceeds 20,000.

	1973		1972		Percent change
	Number	Percent	Number	Percent	
III. Exclusive coverage compared with total employment, <sup>1</sup> executive branch totals:					
Total.....	1,086,361	56	1,082,587	55	+1
Wage system <sup>2</sup> .....	404,955	84	427,089	83	+1
General schedule <sup>3</sup> .....	681,406	47	655,498	46	+1
IV. Exclusive coverage compared with total employment, by major agency:					
1. Army.....	185,192	58	195,412	58	-----
2. Navy.....	179,515	60	192,659	60	-----
3. Air Force.....	179,468	76	181,632	76	-----
4. Veterans' Administration.....	126,455	64	120,344	63	+1
5. Treasury.....	69,741	65	64,327	61	+4
6. Health, Education, and Welfare.....	69,345	53	59,503	52	+1
7. Defense Supply Agency.....	36,578	70	37,309	78	-8
8. Transportation.....	35,345	51	34,532	51	-----
9. National Guard Bureau.....	29,051	59	28,986	61	-2
10. Interior.....	23,549	34	23,164	33	+1
11. General Services Administration.....	22,354	60	21,806	58	+2
12. Tennessee Valley Authority.....	21,895	91	22,550	90	+1
13. Agriculture.....	21,803	19	19,550	17	+2

<sup>1</sup> Federal employment in the executive branch, excluding U.S. Postal Service, FBI, CIA, NSA and foreign nationals serving outside the United States. November 1973=1,940,648; November 1972=1,957,076.

<sup>2</sup> Wage employment: November 1973=483,824; November 1972=512,695.

<sup>3</sup> General schedule employment: November 1973=1,456,824; November 1972=1,413,874.

Union	Number units	Employees represented	Units under agreement	Employees covered	Percent covered
V. Exclusive recognitions and agreements, by major union, November 1973:					
1. AFGE.....	1,587	624,322 (WG 210,088) (GS 414,234)	987	469,371	75
2. NFFE.....	659	118,139 (WG 30,930) (GS 87,209)	429	91,306	77
3. NAGE.....	376	75,953 (WG 35,652) (GS 40,301)	228	57,880	76
4. MTC.....	53	52,585 (WG 50,145) (GS 2,440)	40	42,797	81
5. NTEU.....	88	50,392 (WG none) (GS 50,392)	82	48,250	96
6. IAM.....	91	29,552 (WG 26,862) (GS 2,690)	74	24,338	82

Union	Number of units			Employees represented		
	1973	1972	Percent change	1973	1972	Percent change
VI. Growth in exclusive recognition, by major union:						
1. AFGE.....	1,587	1,541	+3	624,322	620,744	+1
2. NFFE.....	659	646	+2	118,139	114,420	+3
3. NAGE.....	376	381	-1	75,953	82,187	-8
4. MTC.....	53	50	+6	52,585	57,038	-8
5. NTEU.....	88	86	+2	50,392	46,522	+8
6. IAM.....	91	89	+2	29,552	30,585	-3

VII. Number of Different Unions Recognized, by category, November 1973:	
AFL-CIO national and international unions.....	40
Independent unions.....	23
Total.....	63

VIII. Units of Recognition, executive branch total, November 1973:	
AFL-CIO affiliates.....	2,161
Independent unions.....	1,325
Total.....	3,486

IX. Units of Recognition, by selected union, November 1973:	
AFGE.....	1,587
NFFE.....	659
NAGE.....	376
IAM.....	91
NTEU.....	88
IAFF.....	79
MTC.....	53
IBEW.....	46
ANA.....	44
NMU.....	36
SEIU.....	27
IFPTE.....	24
LIUNA.....	21
ACT.....	20
IFFP.....	20
NAPEP.....	20

X. Summary of recognitions, agreements, and employees covered:

	1973	1972	Change/percent
Exclusive recognitions.....	3,486	3,392	+94(+3)
Employees covered.....	1,086,361	1,082,587	+3,774(*)
Recognitions under agreements.....	2,264	1,929	+335(+17)
Employees covered.....	837,410	753,247	+84,163(+11)
Employees covered under agreements as a percent of employees in recognition units.....	77	70	(+7)

\*Less than 1 percent.

	1973		1972		Percent change
	Number	Percent	Number	Percent	
XI. Employees covered by exclusive recognition, postal and nonpostal:					
Postal.....	614,554	89	604,660	91	-2
Nonpostal.....	1,086,316	56	1,082,587	55	+1
Total <sup>1</sup> .....	1,700,915	65	1,687,247	64	+1

<sup>1</sup> November 1973 Federal employment, postal and nonpostal combined=2,632,387.

TABLE A - RECOGNITIONS AND AGREEMENTS BY AGENCY											NOV. 1973	
AGENCY	RECOGNITIONS	EMPLOYEES IN EXCLUSIVE UNITS							AGREEMENTS		EMPLOYEES UNDER AGREEMENT	
		NUMBER	%	WAGE	% W	PROF.	OTHER GS	% GS	Number	Percent Covered	NUMBER	%
Office Economic Opportunity	1	975	*	5	*	776	194	*	1	1	975	*
Department of State	3	383	3%	97	39%	23	263	2%	2	2	258	2%
Agency Intl. Develop	1	1,657	31%	22	96%	152	1,483	31%	1	1	1,657	31%
Treasury	133	69,741	65%	4,484	90%	24,432	40,825	63%	35	116	65,061	60%
Dept. Of Defense Office of Secretary	4	333	*	48	*	15	270	*	4	4	333	*
Army	601	185,192	58%	83,940	86%	9,832	91,420	45%	305	398	142,712	44%
Navy	600	179,515	60%	115,705	84%	3,804	60,006	40%	339	369	133,815	45%
Air Force	241	179,468	76%	87,995	91%	3,093	88,380	66%	145	161	120,626	51%
Defense Nuclear Agency	2	223	*	34	*		189	*	1	1	213	*
Defense Contract Audit	1	373	11%			312	61	11%	1	1	373	11%
Defense Mapping	14	1,789	23%	523	39%	251	1,015	20%	10	10	1,452	19%
Defense Supply Agency	75	36,578	70%	9,029	77%	265	27,284	68%	49	59	33,755	64%
National Guard Bureau	137	29,051	59%	15,914	66%		13,137	53%	75	78	15,381	31%
Justice	19	11,978	42%	1,046	73%	441	10,491	40%	7	7	11,321	39%
Interior	209	23,549	34%	8,679	61%	3,164	11,706	27%	154	160	20,579	29%
Agriculture	134	21,803	19%	2,769	40%	2,468	16,566	18%	83	83	18,069	16%
Commerce	116	10,746	32%	1,839	77%	2,396	6,511	28%	48	95	8,671	26%
Labor	3	10,195	75%	74	91%	6,561	3,560	75%	3	3	10,195	75%
Health, Education & Welfare	271	69,345	53%	4,703	72%	4,032	60,610	52%	127	128	51,831	40%
Housing & Urban Development	57	9,634	55%	62	100%	421	9,151	54%	27	30	3,382	19%
Transportation	219	35,345	51%	4,334	75%	1,052	29,959	49%	78	93	26,114	38%
Atomic Energy Commission	12	3,039	40%	12	11%	982	2,045	40%	9	9	536	7%
Commission on Civil Rights	1	172	*	1	*	19	152	*				
Environmental Protection Agency	14	3,310	34%	161	71%	364	2,785	33%	4	4	904	9%
EEOC	1	2,067	*	11	*	1,231	825	*				
Federal Communications Comm.	1	5	*				5	*	1	1	5	*
Federal Home Loan Bank Board	4	475	*	18	*	251	206	*	1	1	350	*
Federal Power Commission	1	1,102	*	27	*	525	550	*				
Federal Trade Commission	1	36	*			25	11	*				
General Service Administration	165	22,354	60%	12,371	79%	486	9,497	45%	73	98	14,845	40%



TABLE A (cont'd) -- RECOGNITIONS AND AGREEMENTS BY AGENCY												NOV. 1973
AGENCY	RECOGNITIONS	EMPLOYEES IN EXCLUSIVE UNITS							AGREEMENTS		EMPLOYEES UNDER AGREEMENT	
		NUMBER	%	WAGE	% W	PROF.	OTHER GS	% GS	Number	Recognitions Covered	NUMBER	%
Interstate Commerce Commission	3	1,229	*	24	*	324	881	*	3	3	1,229	*
NASA	22	12,161	45%	1,494	93%	3,615	7,052	42%	12	13	7,313	27%
National Capital Housing Authority	1	468	*	468	*				1	1	468	*
NLRB	7	1,784	73%	19	86%	976	789	73%	3	7	1,784	73%
Overseas Private Investment Corp.	1	73	*	2	*	10	61	*	1	1	73	*
Railroad Retirement Board	1	1,346	*	26	*	8	1,312	*	1	1	1,346	*
Renegotiation Board	1	159	*			87	72	*	1	1	159	*
Securities and Exchange Comm.	2	621	*	15	*	106	500	*	1	1	461	*
Selective Service System	8	525	14%	11	58%		514	14%	4	4	314	8%
Small Business Administration	23	2,040	43%	20	100%	35	1,985	43%	10	10	1,217	26%
Smithsonian	4	745	29%	297	48%		448	23%	4	4	745	29%
National Gallery of Art	1	132	*	19	*		113	*	1	1	132	*
TVA	21	21,895	91%	14,497	99%	2,185	5,213	78%	2	21	21,895	91%
U.S. Civil Service Commission	9	3,461	48%	47	81%	85	3,329	48%	2	2	489	7%
U.S. Information Agency	3	1,955	46%	355	94%	50	1,550	41%	2	2	1,925	45%
U.S. Soldiers Home	3	635	*	418	*	39	178	*	2	2	596	*
U.S. Tariff Commission	2	244	*	8	*	124	112	*	1	1	8	*
Veterans Admin.	333	126,455	64%	33,332	91%	11,961	81,162	58%	270	276	113,843	58%
TOTALS	3,486	1,086,361	56%	404,955	84%	86,978	594,428	47%	1,904	2,264	837,410	43%

\* Percentages are not shown for agencies of fewer than 2,500 employees

NOV. 1973

UNION	RECOGNITIONS	EMPLOYEES IN EXCLUSIVE UNITS							RECOGNITIONS COVERED BY AGREEMENTS	EMPLOYEES UNDER AGREEMENT	
		EXCL.	NUMBER	%	WAGE	% W	PROF.	OTHER GS		% GS	NUMBER
AAE	6		221		221				2	105	
ACT	20	7,609		4,076	1%		3,533		9	2,573	
AFGE	1,587	624,322	32%	210,088	43%	28,799	385,435	28%	987	469,371	24%
AFT	7	1,221				1,221			3	179	
ANA	44	5,184				5,168	16		30	3,774	
APCA	5	890					890		4	607	
APWU	14	1,121		897			224		4	341	
BBF	2	788		788					2	788	
BPAT	6	1,534		1,214			320		5	1,525	
BRASC	1	4					14		1	14	
BRC	1	52		52					1	52	
CJA	4	1,362		1,340			22		2	1,339	
FOP	8	341					341		6	296	
FPOI	1	507				507			1	507	
GAIU	14	1,262		1,121			141		13	1,148	
IAFF	79	2,462		4			2,458		56	1,884	
IAM	91	29,552	2%	26,862	6%		2,690		74	24,338	1%
IAS	1	4		4							
IATC	1	35		35					1	35	
IBEW	46	10,240	1%	9,040	2%		1,200		43	8,170	
IBFO	3	236		236					2	236	
ICW	6	468		295			173		6	468	
IFFP	20	1,609					1,609		5	370	
IFPTE	24	6,719		597		2,829	3,293		14	3,520	
IPPA	4	107		103			4		3	99	
ITU	1	5		5							
IUOE	10	2,408		2,173			235		7	2,352	
LIUNA	21	7,169		6,748			421		16	6,340	
MEBA	18	699		682			17		9	152	
MMP	10	382		382					5	77	
MTC	53	52,585	3%	50,145	10%	290	2,150		40	42,797	2%
NAATA	6	695		308			387				
NAATS	4	3,374					3,374		4	3,374	
NABET	4	242		21			221		4	242	
NAGE	376	75,953	4%	35,652	7%	2,570	37,731	3%	228	57,880	3%
NAGI	9	971		35			936		7	794	
NAPEP	20	1,472		1,392			80		10	878	
NAPFE	7	915		633			282		5	850	
NCSA	8	5,919		195		9	5,715		8	5,919	
NEA	3	6,173				6,173			2	4,404	
NFFE	659	118,139	6%	30,930	6%	9,765	77,444	6%	429	91,306	5%
NLRBP	2	208				208			2	208	
NLRBU	5	1,576		19		768	789		5	1,576	

TABLE B (cont'd.) - EXCLUSIVE RECOGNITIONS AND AGREEMENTS BY UNION										
UNION	RECOG- NITIONS	EMPLOYEES IN EXCLUSIVE UNITS							RECOG- NITIONS COVERED BY AGREE- MENTS	EMPLOYEES UNDER AGREEMENT
	EXCL.	NUMBER	%	WAGE	% W	PROF.	OTHER GS	% GS		NUMBER %
NMU	36	5,862		5,446		4	412		27	5,120
NTEU	88	50,392	3 1/2			22,135	28,257	3%	82	48,250 2%
NUCO	1	350				350			1	350
OAA	5	197					197		1	74
OCAW	1	120		120					1	120
OPEIU	3	2,950					2,950		1	2,723
PATCO	13	15,000	1 1/2				15,000	1%	13	15,000 1%
PML	12	182		102			80		6	138
POPA	1	1,231				1,231			1	1,231
PPDSE	3	205		205					2	183
PPI	7	1,488		1,488					7	1,488
RCIA	2	220		181			39		1	120
SCME	5	2,758		686		19	2,053		2	2,535
SEIU	27	9,995	1 1/2	4,140	1%		5,855		21	8,680
SIU	9	1,648		1,634			14		3	101
SMU	2	242		242					1	230
TDA	1	7					7		1	7
TRSOC	1	62				62			1	62
UTU	2	140		140					2	140
UTW	5	114		114					2	39
Other AFL-CIO	20	7,125		3,052			4,073		13	2,679
Other IND.	31	9,328		1,112		4,870	3,346		20	7,252
TOTALS	3,486	1,086,361	56%	404,955	84%	86,978	594,428	47%	2,264	837,410 43%

## UNION RECOGNITION IN THE EXECUTIVE BRANCH - NOV. 1973

TABLE C - EMPLOYEES COVERED BY EXCLUSIVE RECOGNITIONS, BY PAY METHOD		
PAY METHOD	NUMBER	PERCENT OF TOTAL EMPLOYMENT
Trades and labor	404,955	84%
General schedule	681,406	47%
TOTAL	1,086,361	56%

TABLE D - EMPLOYEES COVERED BY EXCLUSIVE RECOGNITIONS, BY AGENCY		
AGENCY	NUMBER	PERCENT OF AGENCY EMPLOYMENT
Army	185,192	58%
Navy	179,515	60%
Air Force	179,468	76%
Veterans Administration	126,455	64%
Treasury	69,741	65%
Health, Education, and Welfare	69,345	53%
All Other	276,645	43%

UNION RECOGNITION IN THE EXECUTIVE BRANCH - NOV. 1973

TABLE E - EMPLOYEES COVERED BY EXCLUSIVE RECOGNITIONS, BY UNION		
UNION	1973	1972
American Federation of Government Employees, AFL-CIO	624,322	620,744
National Federation of Federal Employees	118,139	114,420
National Association of Government Employees	75,953	82,187
Metal Trades Councils, AFL-CIO	52,585	57,038
National Treasury Employees Union	50,392	46,522
International Association of Machinists and Aerospace Workers, AFL-CIO	29,552	30,585
All other	135,418	131,091

TABLE F - EXTENT OF ORGANIZATION, BY MAJOR UNION										
RANK	UNION	RECOGNITIONS	EMPLOYEES IN EXCLUSIVE UNITS					RECOGNITIONS COVERED BY AGREEMENTS	EMPL. UNDER AGREEMENT	
		EXCL.	TOTAL NUMBER	RANK	WAGE	RANK	GENERAL SCHEDULE		NUMBER	% *
1	AFGE	1587	624,322	1	210,088	1	414,234	987	469,371	24%
2	NFFE	659	118,139	4	30,930	2	87,209	429	91,306	5%
3	NAGE	376	75,953	3	35,652	4	40,301	228	57,880	3%
4	MTC	53	52,585	2	50,145	6	2,440	40	42,797	2%
5	NTEU	88	50,392	6	0	3	50,392	82	48,250	2%
6	IAM	91	29,552	5	26,862	5	2,690	74	24,338	1%

(\*NOTE: This percentage is based on total nonpostal employment (1,940,648).

TABLE G - UNION RECOGNITION 1969 - 1973										
UNION	EMPLOYEES REPRESENTED IN EXCLUSIVE UNITS, BY MAJOR UNION									
	1973		1972		1971		1970		1969	
	RANK	NUMBER	RANK	NUMBER	RANK	NUMBER	RANK	NUMBER	RANK	NUMBER
AFGE	1	624,322	1	620,744	1	606,391	1	530,550	1	482,357
NFFE	2	118,139	2	114,420	2	106,881	2	77,099	3	58,676
NAGE	3	75,953	3	82,187	3	83,067	3	68,615	4	58,239
MTC	4	52,585	4	57,038	4	61,046	4	66,089	2	75,243
NTEU	5	50,392	5	46,522	5	41,331	5	38,502	5	38,518
IAM	6	29,552	6	30,585	6	31,098	6	32,350	6	34,139

TABLE H - TOTAL EMPLOYEES IN EXCLUSIVE UNITS AND COVERED BY AGREEMENTS  
1963 - 1973

EMPLOYEES IN EXCLUSIVE UNITS										EMPLOYEES COVERED BY AGREEMENTS									
TOTAL EMPLOYEES					WAGE SYSTEM EMPLOYEES					GENERAL SCHEDULE EMPLOYEES									
YEAR*	TOTAL	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT			
1963	180,000																		
1964	230,543	12											110,573	6					
1965	319,724	16											241,850	12					
1966	434,890**	21	226,150	40			179,293	15					291,532	14					
1967	629,915	29	338,660	54			291,255	21					423,052	20					
1968	797,511	40	400,669	67			396,842	28					556,962	28					
1969	842,823	42	426,111	72			416,712	29					559,415	28					
1970	916,381	48	429,136	81			487,245	35					601,505	31					
1971	1,038,288	53	437,586	84			600,702	42					707,067	36					
1972	1,082,587	55	427,089	83			655,498	46					753,247	39					
1973	1,086,361	56	404,935	84			681,406	47					837,410	43					

\*NOTE: 1963-1966 Statistics based on figures as of mid-year; 1967-1973 figures are as of November.

\*\*NOTE: Wage system and general schedule combined do not equal total because of unavailability of information on status of some employees.

TABLE I—GROWTH OF EXCLUSIVE RECOGNITION		
MID-YEAR	EMPLOYEES IN EXCLUSIVE UNITS	% GAIN EMPLOYEES
1963	180,000	
1964	231,000	28%
1965	320,000	39%
1966	435,000	36%
1967 (Nov.)	630,000	45%
1968 (Nov.)	798,000	27%
1969 (Nov.)	843,000	6%
1970 (Nov.)	916,000	9%
1971 (Nov.)	1,038,288	13%
1972 (Nov.)	1,082,587	4%
1973 (Nov.)	1,086,361	*

\*Less than 1%

TABLE J. RECOGNITIONS AND AGREEMENTS BY UNION AFFILIATION												
UNION	RECOGNITIONS	EMPLOYEES IN EXCLUSIVE UNITS						OTHER GS	% GS	RECOGNITIONS COVERED BY AGREEMENTS	EMPLOYEES UNDER AGREEMENT	
		NUMBER	%	WAGE	% W	PROF.					NUMBER	%
FL-CIO	2,161	793,705	73%	330,655	82%	33,162		4,39,888	68%	1,400	604,735	72%
National Independent	1,294	283,328	26%	73,188	18%	48,946		161,194	31%	844	225,423	27%
Other Independent	31	9,328	1%	1,112	*	4,870		3,346	1%	20	7,252	1%
TOTALS	3,486	1,086,361	100%	404,955	100%	86,978		594,428	100%	2,264	837,410	100%

NOV 1973



TABLE K - NATIONAL EXCLUSIVE RECOGNITION\* November, 1973

RECOGNITION GRANTED BY	LABOR ORGANIZATION	DATE RECOGNIZED	UNIT DESCRIPTION
Office of Economic Opportunity	AFGE	4/30/72	All non-supervisory GS-WG employees including prof. of the OEO, nationwide.
Agency for International Development	AFGE/1534	3/6/72	Activity-wide except Foreign Service employees & employees in the Office of Auditor General engaged in security work.
Department of Treasury/Bureau of Alcohol, Tobacco and Firearms	NTEU	4/23/73	Bureau-wide excluding prof. Criminal Enforcement Division employees, and National Headquarters employees.
Department of Treasury/Bureau of The Mint	AFGE	9/24/73	Activity-wide except prof.
Department of Treasury/Bureau of The Mint	AFGE	9/24/73	Professional activity-wide.
Department of Navy/Military Sealift Command	MEBA	6/15/73	Marine Engineering Officers Worldwide.
Department of Justice/Bureau of Prisons and Federal Prison Industries Inc.	AFGE (Council of Prison Locals)	1/17/68	Service-wide, except Headquarters personnel.
Department of Justice/Immigration and Naturalization Service	AFGE (National Border Patrol Council)	6/21/67	Non-professional employees assigned to Border Patrol Sectors, Service-wide.
Department of Justice/Immigration and Naturalization Service	AFGE (Council of I. & N.S. Locals)	4/26/68	Service-wide, except prof. and Border Patrol employees
Department of Agriculture/ Agricultural Marketing Service, Meat Grading Branch	AFGE (National Office)	8/28/70	Meat Graders activity-wide.
Department of Agriculture/ Agricultural Marketing Service, Tobacco Div.	NFFE Local 1555	9/6/68	Tobacco Inspectors activity-wide.
Department of Agriculture/Animal and Plant Health Inspection Service, Office of the Administration	AFGE (National Joint Council of Food Inspection Locals)	3/7/72	Food Inspectors activity-wide.
Department of Agriculture/Animal and Plant Health Inspection Service, Plant Protection and Quarantine	FPQT	9/1/64	Professional activity-wide.
Department of Agriculture/Office of the Inspector General	NFFE Local 1375	9/25/64	Special agents & auditors GS-5 to GS-13
Department of Labor	AFGE Local 12	8/29/62	Department-wide in Washington, DC Metropolitan area.

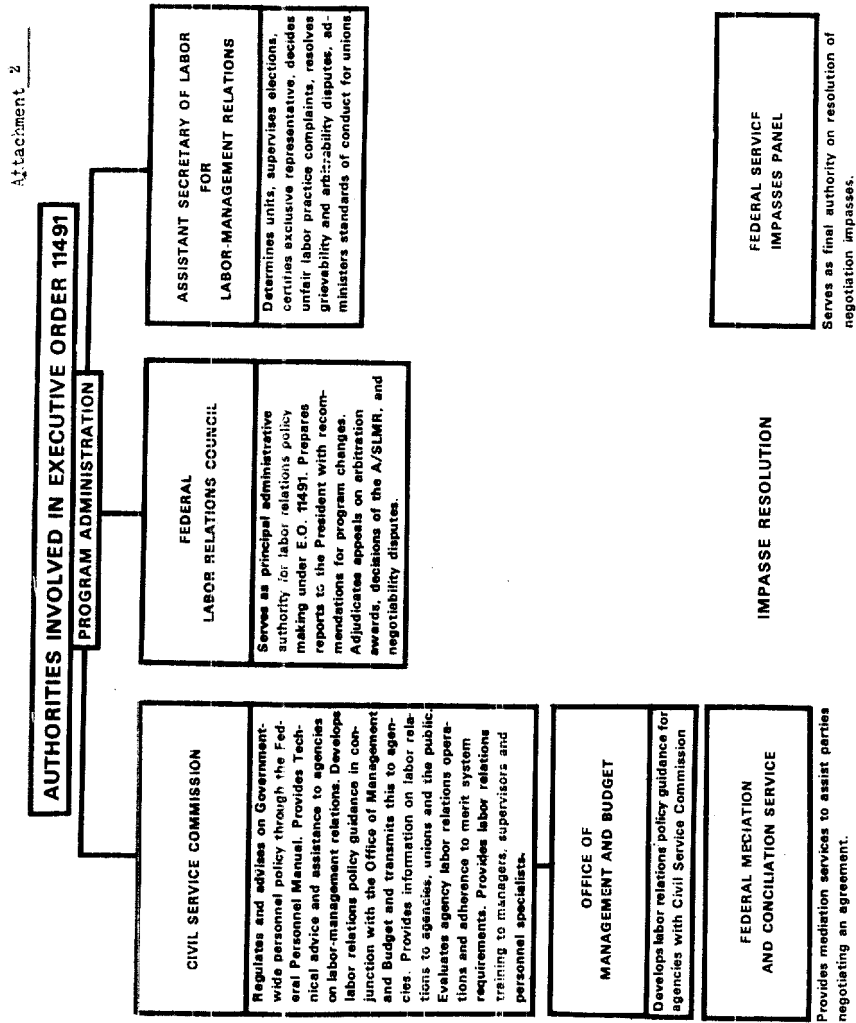
TABLE K - NATIONAL EXCLUSIVE RECOGNITION\* November, 1973  
(Continued)

RECOGNITION GRANTED BY	LABOR ORGANIZATION	DATE, RECOGNIZED	UNIT DESCRIPTION
Department of Labor	AFGE (National Council of Field Labor Lodges)	11/5/65	Department-wide outside the Washington DC Metropolitan area.
Department of Labor (LSA)	NUCO	10/18/72	All non-supervisory field Labor-Management Relations Compliance Officers & Compliance Assistants, GS-13 & below.
Department of Transportation/FAA, Flight Service Stations and International Flight Service Stations	NA ATS	2/29/72	All air traffic control specialists.
Department of Transportation/FAA, Airport Traffic Control Towers, Air Route Traffic Control Centers and Combined Station Towers	PATCO (an affiliate of MEBA)	10/20/72	All air traffic control specialists.
Department of Transportation/ Federal Railroad Administration Headquarters	AFGE (National Office)	4/28/71	Nationwide, except prof. and the Alaska Railroad.
Department of Transportation/ National Traffic Safety Administration	AFGE (National Office)	5/4/73	All non-professional employees.
Equal Employment Opportunity Commission	AFGE	7/6/71	Activity-wide.
Federal Power Commission	AFGE Local 421	11/13/70	Activity-wide.
National Labor Relations Board, General Counsel	NLRBU	11/27/64	All professional employees of the regional, sub-regional and resident offices of the NLRB excluding Region 8 in Cleveland.
National Labor Relations Board, General Counsel	NLRBU	11/27/64	All clerical and non-professional employees of the regional, sub-regional, and resident offices of the NLRB excluding Region 8 in Cleveland.
Overseas Private Investment Corporation	AFGE Local 1534	9/22/71	Activity-wide.
Railroad Retirement Board	AFGE (Council of Locals 375 and 808)	5/8/63	Activity-wide.
Tennessee Valley Authority	Tennessee Valley Trades and Labor Council	1937	TVA-wide.
Tennessee Valley Authority	Salary Policy Employee Panel	11/18/43	TVA-wide.

\* See Civil Service Commission Bulletin 711-28, Page 5, for guidelines.

TABLE L - NATIONAL CONSULTATION RIGHTS, November, 1973

AGENCY	UNION	AGENCY	UNION
TREASURY . . . . .	NTEU	INTERIOR . . . . .	NFFE
. . . . .	NCSA	(Bureau of Reclamation) . . . . .	IBEW
. . . . .	AFGE	AGRICULTURE . . . . .	AFGE
(Customs) . . . . .	NCSA	. . . . .	NFFE
(Customs) . . . . .	AFGE	COMMERCE . . . . .	NFFE
		. . . . .	NAGE
DEPARTMENT OF DEFENSE . . . . .	MTD	HEALTH, EDUCATION & . . . . .	
. . . . .	NFFE	WELFARE . . . . .	AFGE
. . . . .	OEA	(Social Security) . . . . .	AFGE
. . . . .	IAM-AW	HOUSING & URBAN . . . . .	
. . . . .	AFGE	DEVELOPMENT . . . . .	AFGE
Office of Secretary . . . . .	AFGE	TRANSPORTATION . . . . .	AFGE
Army . . . . .	IAM	. . . . .	NAGE
. . . . .	NAGE	ATOMIC ENERGY COMM . . . . .	AFGE
. . . . .	NFFE	ENVIRONMENTAL PROTECTION . . . . .	
. . . . .	AFGE	AGENCY . . . . .	AFGE
Navy . . . . .	AFGE	GENERAL SERVICES ADMIN . . . . .	AFGE
. . . . .	IAM	. . . . .	NFFE
. . . . .	MTD	INTERSTATE COMMERCE COMM . . . . .	AFGE
. . . . .	NAGE	NATIONAL AERONAUTICS & SPACE . . . . .	
. . . . .	NFFE	ADMINISTRATION . . . . .	AFGE
Air Force . . . . .	NFFE	RENEGOTIATION BOARD . . . . .	AFGE
. . . . .	NAGE	SECURITIES & EXCHANGE COMM . . . . .	AFGE
. . . . .	AFGE	SELECTIVE SERVICE SYSTEM . . . . .	NFFE
DEFENSE CONTRACT AUDIT . . . . .	AFGE	SMALL BUSINESS ADMIN . . . . .	AFGE
DEFENSE MAPPING . . . . .	AFGE	SMITHSONIAN . . . . .	AFGE
DEFENSE SUPPLY . . . . .	AFGE	CIVIL SERVICE COMM . . . . .	AFGE
NATIONAL GUARD BUREAU . . . . .	ACT	VETERANS ADMIN . . . . .	SEIU
. . . . .	AFGE	. . . . .	NAGE
. . . . .	NAGE	. . . . .	NFFE
. . . . .	NFFE	. . . . .	AFGE
JUSTICE . . . . .	AFGE	ARMY & AIR FORCE EXCHANGE . . . . .	AFGE
(U.S. Marshals Service) . . . . .	AFGE		



ATTACHMENT 8

U.S. FEDERAL LABOR RELATIONS COUNCIL,  
Washington, D.C., April 26, 1974.

To: Mr. Anthony F. Ingrassia, Office of Labor-Management Relations, Civil Service Commission.

From: Harold D. Kessler, Acting Executive Director.

Subject: Council Case Handling Statistics.

The following is supplied pursuant to your request for a breakdown of certain Council case processing statistics previously furnished your office by Mr. Frazier.

	Received	Closed
I. 1972:		
A/SLMR cases.....	26	16
Negotiability issues.....	19	10
Arbitration awards.....	10	3
Total.....	55	29
II. 1973:		
A/SLMR cases.....	33	33
Negotiability issues.....	22	38
Arbitration awards.....	12	11
Total.....	67	82
III. 1974 (January-March):		
A/SLMR cases.....	14	12
Negotiability issues.....	4	4
Arbitration awards.....	8	2
Total.....	24	18

FEDERAL LABOR RELATIONS COUNCIL

The Federal Labor Relations Council was established by Executive Order 11491, *Labor-Management Relations in the Federal Service*, which was issued by President Nixon on October 29, 1969, effective on January 1, 1970. The Council consists of the Chairman of the Civil Service Commission, who is the Chairman of the Council, the Secretary of Labor and the Director of the Office of Management and Budget.

The Council was established in response to a clearly recognized need for a central authority to administer the Federal sector labor-management relations program. Executive Order 10988, the first Executive Order governing labor-management relations in the executive branch, had provided that authority to administer the program should be vested in the heads of executive departments and agencies with technical guidance and assistance provided by the Department of Labor and the Civil Service Commission. Within a few years agencies and unions clearly recognized the need for a central authority to administer the program and make final decisions on policy questions and disputed matters. According to the Report of the 1969 Study Committee, agencies had found that the lack of authoritative central rulings on policy questions tended to build up unreasonable pressures on the labor-management relationship. The mere appearance of bias inherent in agency resolution of disputes between the agency and a union had placed an excessive burden on agency decisionmaking. Labor organizations complained of the basic inequality in such an arrangement and insisted on program supervision by a central authority and third-party handling of disputed matters.

Thus, the Council was established to provide overall policy and program direction for labor-management relations in the executive branch and to resolve specific disputes between unions and other Federal agencies. In resolving such disputes, it serves as a third party in the sense that it is not a party to the disputes before it. The Study Committee and the President concluded that a central body of high-level officials in the executive branch, such as the Council with its particular composition, would ensure the desired balance of judgment and expertise in the resolution of disputes and in the administration of the program. In effect, it is the responsibility of the Council to promote what the Study Committee, which recommended its creation, described as "an equitable balance of rights and responsibilities among the parties directly at interest—the employees, labor organizations, and agency management—and the need, above all, in public service to preserve the public interest as the paramount consideration."

The functions of the Council are described in section 4(b) and (c) of the Order. Section 4(b) states that the Council shall administer and interpret the Order, decide major policy issues, prescribe regulation, and, from time to time, report and make recommendations to the President. Section 4(c) provides that the Council may consider, subject to its regulations— (1) appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations issued pursuant to section 6 of the Order; (2) appeals on negotiability issues as provided in section 11(c) of the Order; (3) exceptions to arbitration awards; and (4) other matters it deems appropriate to assure the effectuation of the purposes of the Order.

To carry out its functions, the Council has issued rules and regulations which are contained in Table 5, Chapter XIV, of the Code of Federal Regulations, Part 2410 of those rules sets forth the procedures under which the Council, as provided in section 4(b) of the Order, will issue interpretations of the Order and statements on major policy issues. Part 2411 of those regulations sets forth the procedures under which the Council will review decisions of the Assistant Secretary of Labor, negotiability issues, and arbitration awards.

The Assistant Secretary of Labor for Labor-Management Relations is responsible for deciding questions as to the appropriate unit for purposes of exclusive recognition and related representation issues; for supervising representation elections; for deciding unfair labor practice complaints and alleged violations of the standards of conduct for labor organizations; and for deciding whether a grievance is subject to a negotiated grievance procedure or to arbitration under an agreement. The Council will accept an appeal from an Assistant Secretary decision in such matters where a major policy issue is present or where it appears that his decision was arbitrary and capricious.

Because bargaining in the Federal sector takes place within an extensive existing legal structure of statutes, executive orders and regulations, the Order provides a means to resolve disputes as to whether a given bargaining proposal conflicts with such law. Determinations in such cases are initially made by the head of an agency. A union may appeal to the Council for a decision when it disagrees with an agency head's determination that the proposal would violate applicable law or regulation of appropriate authority outside the agency or the Order, or, where the agency head has relied upon agency regulations, the union may appeal to the Council if it believes the agency regulations, as interpreted by the agency head, violates applicable law, the Order or regulation of appropriate authority outside the agency.

The third type of appeal which may be brought before the Council is an exception to an arbitration award issued pursuant to a negotiated grievance procedure. The Council will grant a petition for review of an arbitration award only where it appears from the facts described that the exception presents grounds that the award violates law, appropriate regulation, or the Order, or other grounds similar to those upon which challenges to arbitration awards are sustained by courts in private sector labor-management relations.

From its creation in January 1970 through March 31, 1974, the Council has received 218 appeals cases under section 4(c) of the Order—115 have been appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations which were issued pursuant to section 6 of the Order—74 have been appeals from agency head determinations on negotiability issues under section 11(c) of the Order—and 29 have been exceptions to arbitration awards issued pursuant to agreements negotiated under the Order.

When President Nixon signed E.O. 11491, he directed that a review and assessment of operations under the Order be made after one year. That review was initiated by the Council with public hearings in October 1970. Those hearings were followed by an intensive study by the Council of major policy issues which were raised and subsequently by a report to the President which resulted in amendments to the Order.

In September 1973 the Council initiated its second general review of the Federal sector labor-management relations program. As a first step, unions, agencies and other interested parties were asked to suggest issues for consideration, including possible alternative courses of action. After carefully examining all the matters proposed for inclusion in the review, the Council selected 23 areas which became the central focus of the review and parties were asked to submit substantive position papers on these areas. Following receipt and review of the submissions, the Council held public hearings on April 8, 9, and 10, 1974. Representatives of selected agencies and labor organizations testified at the hearings. The purpose of the hearings was to provide the Council an opportunity to seek amplification of the written submissions which had been previously submitted and to pursue proposals made.

Among the areas under review by the Council are the following:

- (1) The treatment of specific categories of people under the Order, such as supervisors, management officials, confidential employees, professional employees, guards, and attorneys.
- (2) Recognition procedures, including the requirement for secret ballot elections under the Order.
- (3) The consolidation of existing bargaining units.
- (4) The scope of negotiations, including the impact of agency regulations and management rights on the scope of negotiations.
- (5) Negotiated grievance procedures and arbitration.
- (6) The requirement for review and approval of agreements to ensure that they comport with law.
- (7) Operation of third-party procedures.
- (8) Official time for union representatives.
- (9) The impact of agency reorganizations on the labor-management relationship.

Those who testified were invited to submit supplementary statements to the Council. Following a careful review and analysis of the transcript and the parties' written submissions, the Council will prepare a report and recommendations for submission to the President.

ATTACHMENT 4

U.S. FEDERAL SERVICE IMPASSES PANEL,  
*Washington, D.C., April 26, 1974.*

To: Anthony F. Ingrassia, Director, Office of Labor-Management Relations,  
Civil Service Commission.

From: Howard W. Solomon, Executive Secretary.

RE: Background material for Chairman Hampton's testimony.

In response to your April 16, 1974, request for a brief statement on the Panel's function, organization, membership, and case statistics for Chairman Hampton's testimony on Federal labor relations legislation, the following information is provided.

The Federal Service Impasses Panel, which has been in existence since August 10, 1970, is an agency established pursuant to section 5 of Executive Order 11491, as amended, to assist Federal agencies and labor organizations in the resolution of negotiation impasses. If the Panel gives favorable consideration to a request for assistance, it will make recommendations for the resolution of the impasse.

The Panel is composed of seven individuals appointed by the President from outside the Federal Government who are experienced in the field of labor-management relations and who devote some or a major part of their time to the arbitration of labor disputes. Many have also had War Labor Board experience in dispute settlement, and have served on Presidential Emergency Boards under the Railway Labor Act, Taft-Hartley Boards of Inquiry, and various State, county and municipal boards for dispute resolution.

The members of the Panel are: Jacob Seidenberg, Chairman; Lloyd H. Bailer, Richard L. Epstein, Albert L. McDermott, Jean T. McKelvey, Arthur Stark, and James C. Vadakin.

The members of the Panel serve on a part-time basis to the extent dictated by the volume of Panel business. Although three or more members constitute a quorum, the entire Panel has been meeting almost monthly at its Washington, D.C., office.

As the administrative head of the Panel, the Chairman is responsible for the overall leadership and direction of its operations. He presides at all meetings of the Panel and provides coordination with the Federal Labor Relations Council, the Federal Mediation and Conciliation Service, and the Department of Labor regarding administration of the Order.

An Executive Secretary, assisted by three Staff Associates, is responsible for the day-to-day administration of the Panel's responsibilities. Encompassed within the sphere of the Office of the Executive Secretary are case handling, informal assistance to agencies and labor organizations, liaison with key staff members of other third-party agencies providing services under the Order, and other administrative responsibilities.

As of April 15, 1974, the Panel had received a total of 105 requests for assistance. (Chart I) Except for five joint requests, all other actions have been initiated by labor organizations. Ninety-two cases had been closed as of April 15, 1974, (Chart II) and 14 were still pending. Only 20 disputes, or 19 percent of the closed cases, required a factfinding hearing. Eighteen of these factfinding hearings were followed by the issuance of a Panel Report and Recommendation for Settlement. It is noteworthy that 16 of the 18 Panel Reports and Recommendations were accepted *in toto* by the parties. In the other two cases, the Panel's recommendations were used as a basis for settlement. Most of the remaining 72 cases were settled informally either at the prehearing conference after factfinding had been directed, or during the course of negotiations which were resumed voluntarily or at the direction of the Panel.

Chart III indicates that the most prevalent impasse issues, which have been brought before the Panel, are: official time for union negotiations; advisory



versus binding arbitration as the terminal step of the negotiated grievance procedure; union representation concerning promotions and awards; and scheduling of work. In the past year, however, the focus of the issues at impasse coming to the Panel have shifted to issues concerning: merit promotions; details and temporary promotions; incorporation of "just and sufficient" cause as a criterion for disciplinary action; and contract language in which disputes over the interpretation of agency regulations, which have been cited in the agreement, would be subject to the negotiated grievance and arbitration procedure.

Attachments.

CHART I.—CASES RECEIVED

	1970	1971	1972	1973	1974 <sup>1</sup>	Total
Cases received.....	16	24	26	30	9	105

<sup>1</sup> As of Apr. 15, 1974.

CHART II.—DISPOSITION OF CLOSED CASES

	1970	1971	1972	1973	1974 <sup>1</sup>	Total
Withdrawn.....	1	6	8	8	1	24
Jurisdiction declined.....	7	1	1	1	1	11
Returned for more negotiation.....	4	4	1	1	1	11
Returned for more mediation.....	1	1	1	1	1	5
Returned for other voluntary arrangements.....	1	4	3	1	1	10
Directed to 11(c).....	1	1	5	8	2	16
Settled prior to factfinding.....	3	3	7	5	1	19
Settled after panel report and recommendations.....	3	3	7	5	1	19
Total closed.....	16	24	25	24	3	92

<sup>1</sup> As of Apr. 15, 1974.

CHART III.—FREQUENCY OF ISSUES IN CASES

	1970	1971	1972	1973	1974 <sup>1</sup>	Total
Official time for negotiations.....	1	2	5	10	1	19
Grievance arbitration: advisory v. binding.....	2	4	4	6	1	17
Promotion and awards—union representation.....	3	3	3	3	1	13
Hours of work—including work scheduling.....	5	3	2	4	1	15
Grievance procedure.....	2	3	4	1	2	12
Leave.....	1	2	4	2	1	10
Pension, health, safety.....	1	1	5	1	1	9
Allocation of parking spaces.....	2	2	1	2	1	8
Service charge for dues withholding.....	1	1	2	5	1	10
Wages.....	3	1	1	1	1	7
Merit promotion.....	8	37	22	30	19	116
All other.....	8	37	22	30	19	116
Total.....	27	58	53	68	26	232

<sup>1</sup> As of Apr. 15, 1974.

ATTACHMENT 5

U.S. DEPARTMENT OF LABOR,  
OFFICE OF THE ASSISTANT SECRETARY,  
Washington, D.C., May 10, 1974.

HON. ROBERT E. HAMPTON,  
Chairman, U.S. Civil Service Commission,  
Washington, D.C.

DEAR BOB: The attached data is supplied pursuant to your request for a  
breakdown of certain Assistant Secretary case processing statistics.

If you desire additional information, please let me know.

Sincerely yours,

PAUL J. FASSEE, JR.  
Assistant Secretary of Labor.

Attachment.

FEDERAL LABOR-MANAGEMENT RELATIONS--WORKLOAD DATA--JAN. 1, 1970 THROUGH MAR. 31, 1974

	1970	1971	1972	1973	1974 <sup>1</sup>	Total
Representation cases:						
Opened.....	1,409	970	583	679	179	3,820
Closed.....	755	1,311	599	642	172	3,479
Unfair labor practice cases:						
Opened.....	240	197	243	343	70	1,093
Closed.....	63	262	203	256	94	878
Grievability and arbitrability cases:						
Opened.....			5	26	18	49
Closed.....			1	17	10	28
Elections supervised.....	646	666	303	367	81	2,063
Representation hearings held.....	78	88	69	62	13	310
Unfair labor practice hearings held.....	2	14	35	77	27	155
Assistant Secretary's decisions:						
Representation cases.....	2	111	95	57	21	286
Unfair labor practice cases.....	1	8	15	40	17	81
Standards of conduct cases.....			2	3		5
Assistant Secretary's rulings on requests for review.....	27	114	99	91	26	357

<sup>1</sup> As of Mar. 31, 1974.

Total number of cases:	
Opened.....	4,962
Closed.....	4,385
Total number of hearings held.....	465
Total number of Assistant Secretary's decisions.....	372
Total number of Assistant Secretary's rulings on requests for review.....	357

## ATTACHMENT 6

### AN ASSESSMENT OF LABOR-MANAGEMENT RELATIONS CLIMATE AT FEDERAL FIELD ACTIVITIES

#### *Basis of the survey*

Each of the Commission's ten Regional Labor Relations Officers conducted a survey during the month of May, 1973 in order to sample the general climate for labor-management relations existing at Federal field activities and installations. The sample was composed of field activities which in the judgment of the Labor Relations Officers are representative of the overall perspective within the region. Very small installations and those with little or no labor relations activity were excluded from the sample.

The sample consists of 99 representative field activities that are engaged as exclusive representatives of 362 units of recognition (bargaining units) under in a bilateral relationship with unions that have been recognized or certified the Federal program. In those situations where multi-unit agreements apply to multiple units of recognition or to a nationwide agreement, where for administrative purposes, employees are organized into separate local unions on a geographical basis, all such elements are considered as a single unit for the purpose of this study.

In order to provide for uniformity among the regions, a series of 13 questions designed to elicit information to provide an overview of program successes and problems was prepared for use as a survey agenda. A list of the questions used as agenda is attached as Appendix "A."

#### *Limitations of Findings and Assessment*

We believe that we have selected a wide enough sample to establish a fairly representative overview of the manner in which Federal labor relations are being carried out. The 362 bargaining units that are represented in data gathered at the 99 installations represent greater than 10% of the total number of units that exist. This percentage would of course be higher if a total count were made of all units covered by multi-unit agreements, rather than to consider them as a single unit. This would be reflected in perhaps a two point increase in percentage of sample.

The data that has been collected was derived through interviews with a single level of management, the managers within the activities having labor relations and/or personnel management responsibilities. The facts as established in this report, therefore, are those as seen through the eyes of staff persons engaged in personnel management activities. No contact was made with union representatives whose views might have differed in some respects. An overview of labor relations climate at local installations extracted from the findings of the Commission's regular program of personnel management evaluation reviews bears out in general terms the findings of this survey. All levels of management, rank and file employees, and the unions give input to such evaluations. This fact points to the general reliability of this survey.

#### *Findings and assessment*

1. *Status of Union-Management Relationship.*—An overwhelming number of activities report that they consider that satisfactory relationships have been established with the unions with which they deal. One large installation reported a good relationship despite the fact that the exclusively recognized local union is under a trusteeship imposed by its parent national union. In the few cases reporting adversary relationships, they were attributed to problems generated by personality conflicts or deficiencies.

*Assessment*

On the basis of our findings a good case is made for the stability of relationships that have evolved in the Federal collective bargaining process. One manager "hit the nail on the head" when he said that good labor relations has improved the installation's overall management process.

2. *The process of negotiations.*—Most activities reported that negotiations with their unions progressed reasonably well, although there were a significant number who believed that there had been delays that should have been avoided. Reasons stated for delays were:

The immaturity of both parties.

Problems created by internal union political situations.

Delays in headquarters approval. A number of agencies reported this. One reported "nit-picking" on the part of headquarters reviewers.

Problems over union proposals that managers considered as non-negotiable issues.

Lengthy delays in the union membership ratification process. A number of agencies reported this.

Delays caused when national union representatives failed to appear at scheduled meetings.

The hard stand that management took on contract issues.

*Assessment*

Many of the problems cited will never be corrected under any system. As the parties gain in maturity and become more knowledgeable and proficient in negotiation techniques we can expect attitudinal problems to diminish to some extent but never totally. The outstanding reasons cited for negotiation delays concern the headquarters approval and the union ratification processes. The streamlining of headquarters approval methods that have been initiated in many agencies should be continued and improved.

3. *Substance of agreements.*—Only 17 instances were given where the activity considers that their agreements are simple boilerplate. Most others believe that their agreements are substantive and properly deal with means and methods for the problem solving process. Agencies are generally in agreement that agreement language and content becomes more sophisticated and meaningful each time that they are renegotiated. A few activities recognize that both parties require additional training in negotiation techniques.

*Assessment*

There is no doubt but that more substantive agreements are being negotiated as time goes on.

4. *Understanding of the collective bargaining process.*—A very large majority of those questioned are of the opinion that the parties to negotiations are dealing with each other with a better understanding of the collective bargaining process. This item closely parallels item 2 to which we received similar response. The general consensus is that the negotiating experience is an educational process, and that the parties, especially managers, had achieved a much better understanding of bilateralism as a result of the negotiation experience. Managers recognize their deficiencies and are aware that they need more training and a still greater understanding of the collective bargaining process. A few acknowledged that union representatives had matured faster than management personnel, indicating the need for additional management training. Some, while of the opinion that their skills had improved, realize that they are far from experts in collective bargaining techniques. One respondent stated that agreement proposals are better researched and presented at the bargaining table. A number of activities attributed a lack of understanding to the fact that negotiating teams change frequently.

*Assessment*

The passage of time during which both parties have gained experience in the collective bargaining process has improved understanding of the collective bargaining process on the part of both unions and managers. While problems still exist, it seems quite apparent that labor relations training activity is beginning to "pay off."

5. *Unfair labor practice complaints.*—40% of the activities reported that they had had involvement in the Unfair Labor Practice machinery of the Executive Order. Many of these had been resolved informally, or had been withdrawn by

the union prior to settlement. Others had gone the full route to A/SLMR decisions, had been dismissed by LMSA or were currently in process. Charges had been filed on just about every possible issue. One activity reported that a union that they deal with has made many threats but has not to date filed any charges. An activity reported that it had been the recipient of 34 charges and that a union trend seems to be developing to file unfair labor practice charges in lieu of grievances.

#### *Assessment*

The filing of numerous unfair labor practice charges should not in itself be considered as a breaking down of the Federal labor-management relations program. Provisions for the orderly processing of such matters were placed in the Executive Order for the use of the parties in dispute settlement efforts. While the reports from this survey are not specific enough to make a sound evaluation, there seems to be fragmented evidence that some unions have a misunderstanding of the purpose and use of the unfair labor practice concept. There is no question but what some frivolous charges have been filed. On the other hand activity managers should govern their actions so as to minimize any deliberate violations leading to charges. This entire area of unfair labor practice charges, their causes, their effect upon continuing relationships, problems created by unfavorable decisions, etc. might well be the future subject for a widespread study.

6. *Official time for negotiations and dues withholding.*—There were few negotiation problems reported for either official time or dues withholding. Most activities gave a simple yes or no answer, and the record is not complete regarding either the amount of time or of fee that has been negotiated. On the basis of those reporting actual charge for dues withholding 76% report that a 2 cent fee has been established; 12% report a fee higher than 2 cents; and 12% report a fee lower than 2 cents. On the basis of those activities reporting actual arrangements for negotiating time on the clock 75% reported the establishment of a straight 40 hours; 14% less than 40 hours; and 11% one half of all duty time that union negotiators are engaged in bargaining. This indicates that a definite pattern has been established. In three quarters of all negotiation activity, there is little or no actual negotiation on these issues.

7. *Fragmentation of bargaining units.*—Approximately 70% of the activities reporting stated that they have had no problems because of the over-fragmentation of bargaining units. A number of others that indicated problems characterized them as minor, more a nuisance than any thing else. A few referred to additional costs, generated as a result of separate negotiation sessions with each union: Examples of specific problems are: overlap of units in periods of reorganization; movement of employees between bargaining units; and union whipsawing in negotiations.

Those activities that have instituted multi-unit bargaining as a solution to unit fragmentation problems are well pleased with the results.

#### *Assessment*

There are few real problems resulting from fragmented units, most of which were established under Executive Order 10988. The multi-unit agreement concept provides one solution to many of these problems.

8. *Agency regulations as an inhibitor to negotiations.*—70% of the activities reported that the imposition of higher agency regulations has not limited the scope of bargaining or otherwise had a significantly inhibitory effect on negotiations. Several of those, however, say that they do not believe that the union would necessarily agree with their judgment. On the other hand 10% made definite statements that higher agency regulations have created negotiation problems at their activities.

#### *Assessment*

It must be expected that opinions of both union and management representatives would vary in this regard depending upon the degree of their collective bargaining sophistication and their desire to negotiate significant issues in collective agreements. The results of this survey do seem to indicate that there is less of a problem in this area than might otherwise have been suspected.

9. *Administration of agreements.*—A majority of the respondents indicate that agreement administration is working well at their activities and that they have few problems in this regard. Most problems cited have their basis in the steward-supervisor relationship or with the manner in which the stewards

perform their representative duties. Problems that have developed in agreement administration are listed as follows:

- Personal animosities holding over from conflict at the bargaining table.
- Problems because of personal relationships between the steward and the supervisor.
- Improper use of stewards time while engaged in representational duties.
- Turn over in military supervision.
- Frivolous grievances.
- Supervisors violation of agreements.
- Managers who have not embraced the spirit of bilateral dealings.

#### Assessment

There were no surprises in the replies to this question. They were about as should have been expected, and generally parallel experience in the private sector.

10. *Solving problems through union-management cooperation and application of the negotiated grievance procedure.*—There were very few examples of activities reporting that employee problems are not being solved through constructive cooperation of the parties. Other than the problems reported in 9 above, the program with the assistance of third parties seems to be working as contemplated, although at times there are delays and irritations. 25% of the respondents noted that problems are being solved although the grievance procedure has not been used. 10% advised that all grievances had been settled at the informal stage. This is not to imply that there are no "horror stories" such as the local union that has sent 23 grievances to arbitration.

#### Assessment

This is an area in which the respondent was required to exercise judgment. We do not know how the union representatives would have responded to this question, but findings from evaluation reports do not suggest a different viewpoint.

11. *Supervisors.*—Of all the matters raised in this survey, the greatest problem that has surfaced concerns the lack of supervisory identity as a member of the management team. Only 40% of the respondents consider that they have no problems in this area. Despite the emphasis on supervisory training in labor-management relations over the past two years, supervisors are generally identifying with employees, rather than recognizing their role as members of the management team. The problem is especially severe at the first level of supervision, but reports show that there are some problems at higher levels. A few reports do indicate that the situation is improving. It is no doubt due to the training that they have been receiving both in agency and Commission training programs that the situation is improving but much remains to be done in continuation of this effort. Very few reports make a definite assertion that "supervisors relate to the management team." The following are examples of responses received from the activities:

- Supervisors are reporting to union officials.
- Supervisors are giving information to unions, and are siding with union positions.
- Supervisors identify with employees; there is little inducement to become a supervisor.
- Supervisors bow to union demands.
- Some supervisors are former union officers with divided loyalties.
- We have definite problems with 1st and 2nd level supervisors.
- The turnover of military supervisors creates problems.
- Problems are created by the retention of supervisors in the unit under the Section 24 savings clause of the Executive Order.
- 1st level supervisors pass the buck.

#### Assessment

Evaluation reports clearly support the information gathered in this survey. This is a real problem which will be difficult to solve. The first level supervisor is management's first line representative in the bilateral process. All efforts should be made to engage him in full management participation.

12. *Professional organizations.*—None of the activities responding recited problems in dealing with professional organizations. Very few, however, have had dealings with such organizations.

13. *Third party procedures.*—90 percent of the activities reported that they had experienced no problems with third party procedures that had inhibited their dealings with the unions. Many, in answer to this question, gave straight “no” answers, making it difficult to evaluate gradations in their replies. Twenty of the activities reported that they had no dealings involving a third party. Twenty-two activities reported that third party agencies had facilitated their dealings with the union. FMCS was cited very often in this context, although in one instance FMCS efforts were said to be pro-union.

*Assessment*

Assuming that the sample used in this study is representative of the overall universe, about 10% of Federal local activities see third party procedures as inhibiting their dealings with unions representing their employees. Most complaints have to do with delays in rendering decisions. Now that the third party agencies have had experience and have “geared up” for discharge of their responsibilities, decisions are coming out with an increasingly greater frequency. It is encouraging to note that so many activities consider that third party involvement has facilitated their dealings with other unions.

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APPENDIX A

*Questions asked in the survey of local installations*

1. Does management at the establishment level believe that their relationships with organized unions are basically satisfactory?
2. If an agreement has been negotiated or renegotiated since November, 1971 (the effective date of the amended Order), did the negotiations move along reasonably well, or were there significant problems or delays? Identify the problems and the extent and reasons for the delays. Were these negotiability disputes? Delays in agreement approval?
3. Was the agreement substantive; did it deal with problems and issues particular to the employees in the unit of recognition? If renegotiated, has the substance been increased over the previous agreement? If so, give examples, if available.
4. Are there indications that the parties to the negotiation are dealing with each other with better understanding of the collective bargaining process?
5. Have ULP charges been filed? What type of charges? How resolved?
6. Have any problems been indicated relating to use of official time for negotiation? Dues withholding fees?
7. Have any problems been caused by unit structure (size and composition) of bargaining unit? Illustrate.
8. Have agency regulations had a significantly inhibitory effect on agreement negotiations? Have the parties identified this as a problem? Are there instances of agency regulation changes narrowing the scope of negotiations?
9. Are there any indications as to whether agreement administration is working well, or problems? Specify.
10. Any indications of constructive union-management cooperation to resolve employee problems? If there is a negotiated grievance procedure, how has it been working?
11. Any problems with identification of the supervisors role as a part of the management team?
12. Any problems in dealings with professional organizations?
13. Any indication that third-party procedures (A/SLMR, FLRC, FMCS, Panel) have facilitated or inhibited dealings between unions and management? If so, specify.

ATTACHMENT 7

CSC/OMB SURVEY OF THE COLLECTIVE-BARGAINING PROCESS UNDER EXECUTIVE ORDER 11491, MARCH 1974

SECTION I. OVERVIEW

A profile strongly indicating the parties are learning to work with each other in a productive bilateral atmosphere, generally devoid of major disagreements or long delays in the negotiating process, emerges from a comprehensive survey of more than 3,000 exclusive bargaining units conducted by the Civil Service Commission in conjunction with the Office of Management and Budget.<sup>1</sup>

While the parties generally have taken much longer to get to the table to negotiate an initial basic agreement that is customary in the private sector, once they get there they reach final accord in time periods somewhat comparable to their private-sector counterparts. There is strong indication, however, that the existence of a prior dues-withholding agreement considerably extends the period between certification or recognition and request for negotiations.

The survey also tends to show that while official time for union negotiators have been a troublesome issue it was not widespread statistically, and once the parties reached agreement over total amount the union used less than allotted.

On the negative side, the agency approval process tended to use as much or more time than the parties used at the table to reach agreement. In almost 20 percent of the cases, special problems or circumstances were cited in the approval process.

A quick overview of the findings:

1. In about 65 percent of the units, dues-withholding agreements were negotiated before an initial basic agreement. (This figure likely is influenced by the fact that some units achieved dues withholding under formal recognition, which did not entitle the union to negotiate agreements on other matters.)

2. While dues withholding typically was achieved in six months or less (58 percent) and in three months or less 45 percent of the time, only 23 percent of the units were covered by basic agreements in less than six months and more than 51 percent took a year or more to negotiate their initial agreement.

3. The existence of a dues-withholding agreement tended to delay the negotiation of a basic agreement. In those units with prior dues agreements, it took an additional six months or more to negotiate a basic agreement 65 percent of the time and more than a year in 47 percent. Furthermore, in 29 percent of the cases the parties have gone more than two years without a basic agreement although a dues-withholding agreement exists.

4. Once a request was made to negotiate (initiated 87 percent of the time by the union) the parties went to the table and started bargaining (including ground rules) in one month or less 40 percent of the time and in three months or less 76 percent of the time.

5. In 64 percent of the exclusive units, ground-rules negotiation took less than one week, and in 87 percent the parties reached agreement in one month or less.

6. Once ground rules were determined, the parties completed negotiations in three months or less in more than 66 percent of the units. Only about 18 percent took more than six months, and about 8 percent took more than one year. Actual period at the table once negotiations on a full agreement were started was six months or less in 82 percent of the cases.

7. More than 71 percent of the units completed negotiations in 10 bargaining sessions or less, with only about 12 percent taking more than 20 sessions.

<sup>1</sup>Figures are based on 3,085 unit responses—representing 89 percent of exclusive-unit population reported under Executive Order 11491. (See Section 2 for methodology and coverage.)



8. The elapsed time between request to negotiate and effective date of the current agreement was six months or less over 50 percent of the time and a year or less 78 percent of the time.

9. The prevailing pattern for official time for union negotiators was 40 hours maximum (53 percent), with the prevailing number of union negotiators being three or four (57 percent). The actual time used per negotiator was 20 hours or less in 57 percent of the cases, while less than 9 percent used more than 40 hours.

10. In 256 cases, or 12 percent of the units, there were requests for exceptions to regulations; waiver of regulations was granted to 19 percent of the requests, including a 50-percent rate on requests involving disciplinary procedures.

11. The most time-consuming issues at the bargaining table were scope of grievance procedure (indicating apparent confusion and problems with the 1971 amendments to the Order covering scope), promotion policies and procedures, overtime policies and practices, time allowances for union stewards, management rights, and official time for negotiations (in that order).

12. Third-party assistance was utilized in only 16 percent of the units, with FMCS involvement predominant (344 cases). The Panel was utilized in 54 cases, the Council in 23 and the A/SLMR in six.

13. The issues most often requiring third-party assistance were promotion policies and procedures, grievance procedure, management rights, official time for negotiations, dues withholding, work-week definition and overtime policies (in that order).

14. In 69 percent of cases, the agreement was forwarded for agency approval within a month after local negotiations were completed; in 7 percent, it was sent forward in three-to-six months.

15. After settlement at the local level, the approval process took three or more months in 36 percent of cases—including over six months in 16 percent, and more than a year in 4 percent. In only 27 percent of the cases was approval completed in less than a month. (These figures include time taken to resolve negotiability issues, and to renegotiate provisions rejected by higher authority.)

## SECTION II. METHODOLOGY

This survey was conducted at the request of the Federal Labor Relations Council—initially, as a result of concerns raised at its first resident summit conference last summer with the other third-party principals responsible for administering the Government-wide labor relations program under Executive Order 11491. During that conference, third-party principals acknowledged a need—expressed before and since by agencies, unions and others—for information, on a comprehensive basis, about just how the negotiating function is working under the Executive Order program. As it developed, the survey objective became more clearly defined as: To produce the basic information essential to informed decision-making by program administrators on the collective-bargaining process—with special emphasis on those aspects staked out as areas of immediate concern to the Council—for its use in connection with the 1973-74 general review of the program.

The Civil Service Commission, in conjunction with the Office of Management and Budget, conducted this survey during the six-month period from September 18, 1973, to March 15, 1974. In anticipation of public hearings on the program scheduled for April 8-10, the Council requested completion of the survey report by April 1, 1974.

The basic survey instrument was a computer-coded questionnaire (Appendix III) developed jointly by CSC's Office of Labor-Management Relations and OMB's Executive Development and Labor Relations Division—with primary input from the Mediation Service, Council and Impasses Panel. Technical assistance from Commission experts in questionnaire-drafting and computer-planning contributed to its design—so as to maximize the objectivity of the responses in eliciting the information sought. Before "locking in," the design and substance of the questionnaire were discussed with headquarters Labor Relations Officers of major Departments and agencies whose suggestions were incorporated, and reviewed by Council staff for final approval.

Some 3,500 questionnaires—one for each unit of exclusive recognition reported under the Order—were mailed to appropriate Federal officials at activities, Gov-

ernment-wide. Their return was monitored by OLMR and the Commission's Regional Labor Relations Officers for maximum response.

This effort produced 3,085 usable questionnaires by March 15, 1974—representing 89 percent of the 3,486 exclusive units recorded in CSC's Labor Agreement Information Retrieval System (LAIRS) as of the November 1973 reporting period for the latest annual recognitions-and-agreements census (Appendix IV). More significant, survey responses included virtually all units covered by negotiated agreements; 2,306 questionnaires indicated coverage by agreements in force or awaiting higher-level approval—representing 102 percent of the 2,264 units under agreement in the LAIRS file as of November 1973.

For programming purposes, an extended deadline of February 15, 1974, was established for keypunching; 2,868 questionnaires were received by the cutoff date and processed by computer. An additional 217 questionnaires, which arrived between February 15 and March 15, were tabulated manually in OLMR to provide the total survey coverage of 3,085.

#### SECTION III. SUMMARY

At the outset, it is essential to recognize the unit basis of the statistical information produced by this survey.

Figures represent the number (or proportion) of exclusive recognition units—as distinguished, for example, from the number (or proportion) of negotiated agreements—covered by a given response. This is commonly indicated by the term "situation."

*Example.*—To say that there are 513 multi-unit situations with respect to agreement coverage means that 513 units are reportedly under multi-unit agreements; it does not mean that there are 513 separate multi-unit agreements reported.

The discussion below is punctuated with parenthetical keys—referencing the response table(s) in Appendix I, unless otherwise specified. In addition to pinpointing the statistical bases of summary findings, they facilitate location of the detailed tabular breakdowns for more specific information.

##### 1. Basic collective bargaining patterns

In the beginning, there was dues withholding, forerunner of basic negotiated agreements in almost two-thirds of situations covered by agreements today (04). In fact, the Federal experience suggests a significant difference between the sense of urgency—in terms of elapsed time—in obtaining dues—withholding arrangements as compared with basic negotiated agreements:

The parties have managed to reach agreement on dues checkoff within three months of recognition in over 45 percent of situations (05.a).

Whereas it has taken the parties a year or more from the date of recognition to reach initial basic agreement in just over 50 percent of situations—half of these stretch on for more than two years from recognition date (1).

And it has required over two years for the parties to achieve basic agreement once dues checkoff had been acquired in nearly 30 percent of situations (05.b); in over a fourth of units under withholding arrangements, the parties haven't even negotiated a basic agreement—most of them continuing under dues checkoff for over two years now (05.a-c).

In a majority of situations, the request for basic-agreement negotiations was made within six months from the date of recognition (03) while the effective date of initial basic agreement followed recognition by a year or longer (1).

Today, over nine-tenths of units are covered by basic negotiated agreement, dues withholding or both—most of them by both (01). Where there is no basic agreement in force (although there may be dues checkoff), situations are about evenly divided between no request for negotiations and some stage of the collective-bargaining process following the request for initial negotiations (02).

In almost seven-tenths of situations, agreements currently in effect have been negotiated since the November 1971 amendments to the Executive Order (f)—nearly half of them for a two-year term, with another one-fifth operating under automatic renewal (g). Over two-fifths of units covered by in-force negotiated agreements are under basic agreements for the first time (2.a). And negotiations for the current agreement were requested by the union in slightly over 87 percent of situations—by management in almost 13 percent (1.a).

Single-unit bargaining—normally involving a union Local and individual Government activity on a one-to-one basis—is the rule in the Federal program, accounting for nearly four-fifths of units covered by negotiated agreements (c).

A majority of all units covered by agreements (whether single- or multi-unit) comprise a mix of General Schedule with Wage Grade employees—although where they are separate, GS-only units outnumber WG-only units by more than 7-to-3 in terms of agreement coverage (e). Just over half of all units under agreement contain 150 or fewer employees each, while a significant proportion (nearly a fourth) include over 500 employees each (d).

### *2. Chronology of collective bargaining*

Currently, in nearly three-fifths of situations the parties are somewhere at mid-term in their negotiated agreement (3). From the request to negotiate, it took them between a week and three months to actually start the negotiations in almost three-quarters of situations (4.a) and between a week and six months to reach an effective agreement in about half of situations (4.b).

Commonly, ground rules were wrapped up in one or two sessions, each lasting four hours or less, during the first week (6). From there, the parties proceeded to basic-agreement negotiations within a month in over three-fourths of situations (7).

Negotiations on the basic agreement were wrapped up within the first three months in two-thirds of situations—commonly in 10 or fewer weekly bargaining sessions, lasting four hours or less each (8).

Once the parties had wrapped up all agreement terms, their settlement went forward within a month for agency-head approval in nearly seven-tenths of situations (9.a). It was approved to become effective within three months from the date the parties had reached agreement in about two-thirds of situations (9.b). And in over four-fifths of situations, there reportedly was no problem encountered on the approval process (10).

### *3. Substance of collective bargaining*

As a rule, the parties agreed to official-time bargaining for employees representing the union in negotiations during regular working hours (13)—with straight time within the 40-hour limit as the prevailing formula, accounting for nearly three-quarters of situations (14). And the official time commonly was provided, in the parties' agreement, for from two to five employee-negotiators (15).

That's what the parties agreed to, but how much official time was *actually* used during the negotiations?

Commonly, one to five employee-negotiators wound up on the clock (16)—but for only 20 hours or less in practice in almost three-fifths of situations (17.a). Consequently, a total of 1000 or fewer hours were spent on the clock by the entire union negotiating team during bargaining in over seven-tenths of situations (17).

Respondents were asked to identify up to six of the most time-consuming issues involved in the negotiations. This produced information on 10,549 responses to a selection of important subjects for bargaining—93 percent of them discussed primarily in the basic-agreement stage of negotiations. Just over 6 percent of these responses indicated requests for exceptions to regulations on the issues—19 percent of which were granted—while less than 9 percent involved resort to a third party—commonly, a Federal mediator. (See Appendix II, Table 2, for complete statistical analysis of bargaining issues—by frequency, stage of negotiations, exception requests and resort to third parties.)

The specific issues prominently identified as requiring the most time to negotiate included:

Scope of the negotiated grievance procedure (identified in over half of situations).

Promotion policies and procedures (in over two-fifths).

Overtime policies and practices (in almost a fourth).

Time allowances for union stewards (in over one-fifth).

Management rights (in just under one-fifth).

Official time for negotiations (in over one-sixth).

Respondents were asked to identify up to four issues on which exceptions to regulations were requested in conjunction with the negotiations; this produced 671 responses on selected issues. In most situations, the parties had an answer to the request within a month; only a bare handful required over six months; none took longer than two years (12.b).

Requests for exceptions to regulations figured in negotiations affecting less than an eighth of situations (12)—most commonly involving promotion policies

and procedures, travel time, scope of the grievance procedure (in that order). Among issues with significant responses, the "success quotient"—in terms of requests actually granted—ranged from only 5 percent on management rights to 50 percent each on discipline, official-time bargaining and time allowances for stewards.

Respondents were asked to identify up to six issues requiring third-party involvement in connection with the negotiations; this elicited 939 responses on selected issues. Resort to third parties was a factor affecting few (just 16 percent) situations—with the requests for third-party participation divided about evenly between both parties acting in concert and the union acting alone (18).

Third-party referrals bore some correlation (though not in the same order) with issues identified as time-consuming—with the top six issues in terms of third-party involvement identified as:

Promotion policies and procedures (in almost a quarter of situations).

Scope of the negotiated grievance procedure (in over one-fifth).

Management rights (in almost an eighth).

Official time for negotiations (also, in almost an eighth).

Service fee for dues deduction (in just over one-tenth).

Definition of the workweek (in about one-tenth).

Other issues with significant response as to third-party participation included overtime policies and practices, discipline, the terminal step in arbitration, and clothing and uniforms.

As a rule, the third-party assistance was invoked during negotiations on the basic agreement (19)—as distinguished from the ground-rules stage—and did not involve a suspension of the bargaining, in about three-fourths of situations (20.a). Third-party participation lasted no longer than a month in a majority of situations—most of them under a week—while it took over two years in less than 2 percent of situations (20).

#### SUPPLEMENTAL REPORT 1

##### *Delays in getting to the table*

Delays in beginning negotiations following the request to negotiate or expiration of the prior agreement were reported in just under one-fifth (496 responses) of situations under agreement or in collective bargaining. Of these, respondent activities attributed the delays to the union in 45 percent of situations (208), to management in 22 percent (110) and to both parties in 33 percent (178).

The most commonly cited reasons were broken down as follows—in descending order:

Delays on the union side—(1) lack of response or preparation, (2) studying the proposals, (3) preoccupation with representation challenges, (4) unavailability of union negotiators, (5) turnover among union officials.

Delays on the management side—(1) studying the proposals, (2) unavailability of management negotiators, (3) reorganization of the unit, (4) turnover among management officials, (5) preoccupation with other negotiations.

Delays on both sides—(1) mutually agreed-to time for preparation, (2) awaiting issuance of 1971 amendments to Executive Order 11491, (3) impasse on ground rules, (4) mutual agreement to defer start of bargaining, (5) scheduling conflicts.

Other reasons commonly given for delay in beginning negotiations—affecting both parties alike—included deaths and illnesses, holidays and vacations, workload requirements and training of negotiators. Some delays were attributed to internal union activities—including election of officers. And both sides reportedly were involved in delays caused by their resort to national headquarters for assistance in preparing for the negotiations.

#### SUPPLEMENTAL REPORT 2

##### *Delays in the approval process*

A review of installations' comments on problems in higher-level approval of negotiated agreements points up their keen and recurring dissatisfaction with both the mechanics and the operation of such procedures.

Multi-tiered clearance requirements (sometimes bottlenecked by bickering between different review levels), excessive delays in processing the approval, repeated rejections of sanitized provisions, lost or misplaced agreements (some-

times never returned)—these were common problems reported by respondent activities. Most changes required by higher-level authority were described—without further specification—as minor technical revisions in negotiated language, to bring it in line with agency policies and regulations. But many installations identified specific issues as most troublesome in securing agency-head approval—in descending order:

Grievance procedures not in conformity with the amendments to Executive Order 11491.

Limitations on assignment of unit work, including contracting out.

Pay policies and practices, including overtime and environmental-pay differentials.

Scope of grievance-arbitration, including the end step and payment of arbitrator's fee.

Promotion and placement, including R-I-F procedures.

Dues withholding, including service charge.

Union-sponsored training, including leave policies and apprenticeship.

Some installations characterized the approval process as an engine of controversy, at higher agency levels, over interpretation or intent of negotiated provisions. A couple of respondent activities even reported "whipsawing" or application of dual approval standards by their own national headquarters.

On the other side of the labor-management equation, many installations attributed delays in agreement approval to the union—in membership ratification where provided for in the agreement, or in national-union approval where that was provided for. And in many situations, respondent activities ascribed delays in agreement approval to such outside influences as questions concerning representation and appeals to the Council on negotiability.

The most favorable experience with the approval process were reported where the parties had managed to short-circuit the requirement—notably, where the agency was experimenting with delegations of approval authority or where continuing dialogue with higher-level authority during the negotiations made approval a pro forma exercise.

## APPENDIX I

### BASIC PATTERNS

(a) Distribution of exclusive-recognition units, by unions within individual agency:	
(See Appendix II, Table 1.)	
(b) Chronology of exclusive recognition, by unit recognition (or certification) date:	
Prior to Jan. 17, 1962.....	95
Jan. 17, 1962 through Dec. 31, 1969.....	1,771
Jan. 1, 1970 through Nov. 23, 1971.....	704
Nov. 24, 1971 to present.....	400
Total.....	2,970
(c) Nature (or type) of agreement coverage, by unit of recognition:	
Single unit.....	1,852
Multiunit.....	513
Total.....	2,365
(d) Number of employees, by unit, covered by negotiated agreements:	
Under 50.....	687
51 to 150.....	667
151 to 250.....	287
251 to 350.....	173
351 to 500.....	191
Over 500.....	621
Total.....	2,626
(e) Composition of units under agreement, by pay method:	
General schedule.....	875
Wage grade.....	345
Both (mixed).....	1,312
Total.....	2,532

(f) Effective date of current negotiated agreement, by unit:	
Prior to Jan. 17, 1962.....	38
Jan. 17, 1962 through Dec. 31, 1969.....	226
Jan. 1, 1970 through Nov. 23, 1971.....	440
Nov. 24, 1971 to present.....	1,597
Total.....	2,301
(g) Termination date of current negotiated agreement, by unit:	
1 year.....	161
2 years.....	1,097
3 years.....	358
Over 3 years.....	59
Automatic renewal.....	501
Indefinite duration.....	102
Total.....	2,278

#### I. PRELIMINARY PROFILE

01. Is the unit covered by:	
a. Basic negotiated agreement.....	304
b. Dues-withholding agreement.....	562
c. Both.....	1,853
d. Neither.....	269
Total.....	2,988
02. If there is no basic agreement, what is the parties' current status?:	
a. Negotiations not requested.....	459
b. Negotiations requested; have not begun yet.....	114
c. Negotiations started; not completed yet.....	175
d. Negotiations completed; agreement waiting approval.....	149
Total.....	897
03. How much time elapsed between the date of recognition and the request to negotiate initial basic agreement?:	
Under 1 week.....	110
1 week to 1 month.....	283
1 to 3 months.....	463
3 to 6 months.....	401
6 to 9 months.....	280
9 to 12 months.....	224
12 to 18 months.....	176
18 to 24 months.....	105
Over 24 months.....	387
Total.....	2,429
04. Did the effective date of the dues-withholding agreement precede the effective date of initial basic agreement?:	
Yes.....	1,588
No.....	1,009
05. How much time elapsed between:	
a. Certification, or recognition, and the effective date of the dues-withholding agreement?:	
Under 1 week.....	288
1 week to 1 month.....	377
1 to 3 months.....	422
3 to 6 months.....	296
6 to 9 months.....	184
9 to 12 months.....	167
12 to 18 months.....	149
18 to 24 months.....	101
Over 24 months.....	366
Total.....	2,330

05. How much time elapsed between—Continued

b. Date of the dues-withholding agreement and the effective date of initial basic agreement?:

Under 1 week.....	241
1 week to 1 month.....	98
1 to 3 months.....	164
3 to 6 months.....	182
6 to 9 months.....	168
9 to 12 months.....	176
12 to 18 months.....	223
18 to 24 months.....	129
Over 24 months.....	555

Total..... 1, 936

c. Date of the dues-withholding agreement and (where no initial basic agreement has been completed) the present?:

Under 1 week.....	31
1 week to 1 month.....	22
1 to 3 months.....	16
3 to 6 months.....	22
6 to 9 months.....	15
9 to 12 months.....	23
12 to 18 months.....	35
18 to 24 months.....	27
Over 24 months.....	451

Total..... 642

II. FACTORS RELATED TO TIME REQUIRED TO NEGOTIATE AGREEMENTS

A. Background

1. How much time elapsed between date of recognition and the effective date of the initial agreement?

Under 1 week.....	26
1 week to 1 month.....	43
1 to 3 months.....	185
3 to 6 months.....	259
6 to 9 months.....	283
9 to 12 months.....	297
12 to 18 months.....	418
18 to 24 months.....	187
Over 24 months.....	540

Total..... 2, 238

a. Which party made the original request to negotiate the current agreement?

Management.....	292
Union.....	1, 994

Total..... 2, 286

2. a. Is the current agreement:

Initial.....	1, 003
Renegotiated.....	1, 300

Total..... 2, 303

3. At what stage of the collective-bargaining proces are the parties now?

a. Mid-term in the current agreement; negotiations for successor agreement not requested yet.....	1, 367
b. Previous agreement has expired; negotiations for new agreement not requested yet.....	109
c. Negotiations for new agreement have been requested; have not begun yet.....	291
d. Negotiations for new agreement are under way now.....	265
e. Negotiations for new agreement have been completed; currently awaiting approval.....	253

Total..... \$2, 285

4. How much time elapsed between:

a. Request to negotiate and actual start of negotiations (including ground rules)?

Under 1 week.....	87
1 week to 1 month.....	804
1 to 3 months.....	825
3 to 6 months.....	332
6 to 9 months.....	77
9 to 12 months.....	47
12 to 18 months.....	39
18 to 24 months.....	19
Over 24 months.....	21

Total..... 2, 251

b. Request to negotiate and effective date of current (or most recent) agreement?

Under 1 week.....	17
1 week to 1 month.....	110
1 to 3 months.....	380
3 to 6 months.....	476
6 to 9 months.....	313
9 to 12 months.....	228
12 to 18 months.....	208
18 to 24 months.....	89
Over 24 months.....	130

Total..... 1, 951

B. Time in Negotiations

6. What time frame was covered by negotiations on ground rules?

Under 1 week.....	1, 353
1 week to 1 month.....	482
1 to 3 months.....	179
3 to 6 months.....	36
6 to 9 months.....	24
9 to 12 months.....	14
12 to 18 months.....	8
18 to 24 months.....	6
Over 24 months.....	9

Total..... 2, 111

a. How many negotiating sessions were held on ground rules?

1.....	1, 111
2.....	454
3.....	191
4.....	99
5.....	51
6.....	32
7.....	6
8.....	14
9.....	3
10 to 20.....	18
Over 20.....	5

Total..... 1, 984

b. How frequent were these sessions on ground rules?

Daily.....	806
Weekly.....	571
Monthly.....	55
Less often.....	464

Total..... 1, 896



*B. Time in Negotiations—Continued*

6. What time frame was covered by negotiations on ground rules—Con.

c. How many hours did each ground-rules session average?

1 hour.....	532
2 hours.....	702
3 hours.....	322
4 hours.....	309
5 hours.....	27
6 hours.....	38
7 hours.....	5
8 hours.....	22

Total..... 1, 957

7. How much time elapsed between completion of ground rules and beginning of basic-agreement negotiations?

Under 1 week.....	592
1 week to 1 month.....	989
1 to 3 months.....	376
3 to 6 months.....	85
6 to 9 months.....	21
9 to 12 months.....	12
12 to 18 months.....	9
18 to 24 months.....	5
Over 24 months.....	6

Total..... 2, 095

8. What calendar period was covered by negotiations on the basic agreement—as distinguished from ground rules?

Under 1 week.....	452
1 week to 1 month.....	458
1 to 3 months.....	515
3 to 6 months.....	331
6 to 9 months.....	122
9 to 12 months.....	103
12 to 18 months.....	71
18 to 24 months.....	43
Over 24 months.....	52

Total..... 2, 147

a. How many negotiating sessions were held on the basic agreement?

1.....	189
2.....	177
3.....	224
4.....	199
5.....	185
6.....	147
7.....	83
8.....	112
9.....	61
10.....	115
11 to 20.....	344
21 to 30.....	97
31 to 40.....	81
41 to 50.....	19
51 to 60.....	10
61 to 70.....	12
71 to 80.....	14
Over 80.....	23

Total..... 2, 092

8. What calendar period was covered by negotiations on the basic agreements—as distinguished from ground rules—Continued

b. How frequent were these sessions on the basic agreement?	
Daily.....	4
Weekly.....	801
Monthly.....	117
Less often.....	181
Total.....	2, 138
c. How many hours did each basic-agreement session average?	
1 hour.....	73
2 hours.....	394
3 hours.....	505
4 hours.....	548
5 hours.....	136
6 hours.....	222
7 hours.....	48
8 hours.....	105
9 hours.....	53
Total.....	2, 034

9. How much time elapsed between:

a. Settlement on all agreement terms (ground rules and basic) and the date it was sent forward for agency approval?	
Under 1 week.....	440
1 week to 1 month.....	972
1 to 3 months.....	365
3 to 6 months.....	139
6 to 9 months.....	38
9 to 12 months.....	34
12 to 18 months.....	23
18 to 24 months.....	9
Over 24 months.....	14
Total.....	2, 034
b. Settlement on all agreement terms (ground rules and basic) and the date of approval?	
Under 1 week.....	62
1 week to 1 month.....	455
1 to 3 months.....	709
3 to 6 months.....	385
6 to 9 months.....	163
9 to 12 months.....	77
12 to 18 months.....	45
18 to 24 months.....	13
Over 24 months.....	17
Total.....	1, 926

10. Were any special problems or circumstances involved in the approval process?

Yes.....	363
No.....	1, 604
Total.....	1, 967

C. Issues in Negotiations

11. What issues consumed the most time in negotiations, over-all? Designate whether each was discussed primarily in the ground-rules or basic-agreement stage of negotiations.

(See Appendix II, table 2.)

12. Were there requests for exceptions to regulations in connection with the negotiations?	256
Yes.....	1, 911
No.....	
Total.....	2, 165
a. What issues were involved? Indicate for each whether the exception was granted or refused. (See Appendix II, table 2.)	
b. How much time (aggregate) elapsed between the requests and the answer?	
Under 1 week.....	135
1 week to 1 month.....	114
1 to 3 months.....	30
3 to 6 months.....	12
6 to 9 months.....	1
9 to 12 months.....	2
12 to 18 months.....	1
18 to 24 months.....	1
Over 24 months.....	0
Total.....	296
13. Was official time authorized for employees representing the union in negotiations during regular working hours?	
Yes.....	1, 878
No.....	367
Total.....	2, 245
14. If official time was authorized, what formula was agreed to?	
Straight time under 40 hours maximum.....	387
Straight time up to 40 hours maximum.....	970
Half-time under 80 hours maximum.....	50
Half-time up to 80 hours maximum.....	33
Half-time over 80 hours maximum.....	117
Other.....	285
Total.....	1, 842
15. How many employee-negotiators representing the union did the parties agree would be entitled to official time?	
1.....	83
2.....	288
3.....	647
4.....	419
5.....	286
6.....	84
7.....	27
8.....	21
9.....	2
Total.....	1, 857
16. How many employee-negotiators (both regulars and alternates) representing the union actually used the official time authorized?	
1.....	142
2.....	311
3.....	623
4.....	323
5.....	204
6.....	89
7.....	25
8.....	17
9.....	4
Total.....	1, 738

17. How much official time (aggregate number of hours) actually was used during the negotiations?

1 to 100	1,299
101 to 200	339
201 to 300	65
301 to 400	24
401 to 500	46
501 to 600	12
Over 600	11

Total 1,796

a. Average hours used per employee-negotiator.

1 to 10	597
11 to 20	400
21 to 30	284
31 to 40	308
41 to 50	32
51 to 60	47
61 to 70	11
71 to 80	27
81 to 90	7
Over 90	28

Total 1,741

D. Third-party involvement

18. Did negotiations involve resort to a third party?

Yes	352
No	1,837

Total 2,189

Designate which third part (or parties).

FMCS	344
FSIP	54
FLRC	23
A/SLMR	6
Other	47

Total 474

Indicate whether management, union, both or neither requested the assistance.

Management	21
Union	140
Both	137
Neither	23

Total 321

19. At what stage of negotiations was third-party assistance invoked?

Ground-rules stage	36
Basic-agreement stage	307
Both	35

Total 378

20. What time frame was covered by the period of third-party involvement?

Under 1 week	134
1 week to 1 month	73
1 to 3 months	66
3 to 6 months	53
6 to 9 months	24
9 to 12 months	17
12 to 18 months	20
18 to 24 months	12
Over 24 months	7

Total 406

20. What time frame was covered by the period of third-party involvement—Con.

a. For how much of this period did negotiations continue?

All.....	110
Most.....	61
Some.....	133
None.....	112

Total..... 416

21. What issues were referred for third-party involvement? Specify third part  
for each.

(See Appendix II, Table 2.)

AGENCY	U N I O N S												APPENDIX II (Table 1)		
	PATCO	IBEW	IAFF	AFGE	LIUNA	CAIU	IAM	UMP	MTC	NMU	IUOE	IPFTE	SEIU	Other	AFL-CIO
Agriculture		1		48											
Commerce				27				1		3				5	
Air Force		2	20	131			4		2		1	1	1	3	
Army		9	20	249	5		26	4	5	18	4		1	11	
Navy		6	24	216	5	3	29	2	30	3	2	13	6	10	
National Guard				27										6	
DSA		2		43	3		4					1			
HEW			1	141	1				6	2			2	4	
HUD				36										1	
Interior		17		33		2						1	1	3	
Justice				36											
Labor				4											
Transportation	9		1	56			4		2	6			1	6	
Treasury				16			1							7	
GSA		2	1	61	1		2				1			12	
NASA			1	11			1					2		2	
NLRB															
VA		1	2	164	3								14	6	
TVA		1			1		1				1		1	12	
Other (Includes NAFAs)				58	2	3	1		1						2
Unspecified			1	15						1					
TOTAL	9	41	71	1372	21	8	73	7	46	33	9	18	27	90	

AGENCY	U N I O N S											TOTAL
	NCSA	NFFE	IEFP	FOP	NAGE	NTEU	NEA	ANA	NAPPE	Other Independent	Un-specified	
Agriculture		66			2					6	1	124
Commerce		12			39				1	3		91
Air Force		46			21		2	1		3	1	239
Army		96	1	1	56					13	3	522
Navy		31	6	3	51			1		48	4	493
National Guard		17			47					14		111
DSA		8		1	15					1	1	79
HEW		44			3			2			2	208
HUD		14									2	53
Interior		130			4		4			7	3	205
Justice		2										38
Labor										1		5
Transportation		14			75	1				2	1	178
Treasury	9	2		1		82				2	1	121
GSA		20	6		5				3	3	2	119
NASA		3								1		21
NLRB										10		10
VA		48	2		14		1	31		2	3	291
TVA										3		20
Other (Includes NAFAe)		18			10					3	2	100
Unspecified		12			1	1		1	1		24	57
TOTAL	9	583	15	6	343	84	7	36	5	122	50	3085

APPENDIX II (Table 2)

(See footnotes at P. 3.) Most Time-Consuming Issues	Stage of Negotiations		Exceptions to Regulations		Third-Party Involvement				
	Ground-Rules (%)	Basic (%)	Requests	Granted (%)	Referrals	FMCS (%)	FSIP (%)	FLRC (%)	Other (%)
ALL ISSUES:	6%	93%	671	19%	939	81%	8%	3%	8%
10,549									
Annual Leave	4%	95%	12	33%	13	91%	(?)	(2)	9%
283									
Arbitration Hearing:									
Official Time	13%	87%	5	(2)	9	100%	0	0	0
29									
Arbitration Procedure (Scope)	4%	95%	10	17%	20	72%	22%	(2)	6%
291									
Arbitrator's Authority:									
Final Step	1%	99%	3	(2)	26	72%	28%	(2)	(2)
87									
Arbitrator Selection, Payment	0	100%	1	0	6	100%	(2)	(2)	(2)
49									
Assignment Clause	3%	97%	2	(2)	9	100%	(2)	(2)	(2)
114									
Cafeteria Services	0	100%	0	0	1	100%	0	0	0
16									
Call-In Allowance	3%	97%	9	25%	1	0	100%	(2)	(2)
65									
Clean-Up (Wash-Up) Time	3%	97%	2	(2)	10	89%	11%	(2)	(2)
142									
Clothing and Uniforms	4%	94%	29	11%	25	79%	8%	5%	8%
126									
Discipline Clause	2%	98%	17	50%	29	100%	(2)	(2)	(2)
351									
Dues Withholding (Charge)	3%	97%	15	38%	38	85%	9%	3%	3%
290									
Dues Withholding (General)	9%	90%	12	(2)	14	85%	(2)	(2)	15%
210									
EEO Joint Committee	0	100%	5	(2)	4	100%	0	0	0
46									
EEO (Nondiscrimination, General)	3%	97%	4	0	8	100%	0	0	0
47									
Environmental Pay	(1)	98%	10	13%	6	100%	0	0	0
149									
Facilities, Services (Union Use)	3%	96%	13	29%	23	90%	10%	(2)	(2)
308									



(See footnotes at p. 3.)		Stage of Negotiations		Exceptions to Regulations		Third-Party Involvement				
Most Time-Consuming Issues	Total	Ground-Rules (%)	Basic (%)	Requests	Granted (%)	Referrals	FMCS (%)	FSIP (%)	FLRC (%)	Other (%)
Grievance Meetings: Representation Presence	242	3%	95%	5	33%	9	100%	(2)	(2)	(2)
Grievance Procedure (Scope)	1,208	3%	97%	49	23%	78	84%	1%	4%	11%
Health and Safety (General)	249	0	99%	15	17%	17	84%	8%	8%	(2)
Joint Committees (Except EEO)	148	4%	95%	20	20%	11	67%	(2)	22%	11%
Management Rights	436	3%	96%	26	5%	41	86%	(2)	6%	8%
Meal and/or Rest Periods	151	3%	97%	6	(2)	13	92%	8%	(2)	(2)
Miscellaneous Leave (Except Annual and Sick)	153	2%	96%	22	23%	15	100%	0	0	0
Negotiating Team: Composition	98	77%	22%	3	(2)	6	100%	(2)	(2)	(2)
Official Time for Negotiations	414	74%	24%	21	50%	41	76%	16%	(2)	8%
Overtime Policies, Practices	539	2%	97%	31	10%	30	76%	(2)	12%	12%
Parking and Transportation	136	1%	98%	7	(2)	19	82%	18%	(2)	(2)
Past Practices Clause	116	0	99%	6	(2)	19	81%	13%	(2)	6%
Printing, Distributing Agreement	94	4%	96%	4	(2)	14	92%	8%	(2)	(2)
Promotion Policies, Procedures	979	3%	96%	79	18%	85	81%	5%	9%	4%
Reduction-in-Force Provision	193	3%	95%	17	25%	12	78%	22%	(2)	(2)
Seniority	181	4%	95%	21	(2)	7	83%	17%	(2)	(2)
Sick Leave	174	2%	97%	16	43%	4	100%	0	0	0

(See footnotes below.)		Stage of Negotiations		Exceptions to Regulations		Third-Party Involvement				
Most Time-Consuming Issues	Total	Ground-Rules (%)	Basic (%)	Requests	Granted (%)	Referrals	FMCS (%)	FSIP (%)	FLRC (%)	Other (%)
Stewards: Time Allowances	497	(1)	99%	10	50%	18	86%	7%	7%	(2)
Subcontracting (Contracting Out)	108	1%	99%	13	(2)	19	86%	7%	(2)	7%
Time (Productivity) Studies	10	0	100%	1	(2)	0	0	0	0	0
Tools and Equipment	43	0	100%	0	0	1	100%	0	0	0
Training (General)	287	1%	98%	12	29%	8	100%	(2)	(2)	(2)
Transfer Clause	18	0	100%	4	(2)	3	100%	(2)	(2)	(2)
Travel Time	129	4%	95%	52	8%	8	76%	12%	12%	0
Unit Definition (Recognition Clause)	88	8%	89%	2	0%	7	50%	(2)	(2)	(2)
Unit Work (Limitations)	152	2%	98%	7	(2)	17	44%	31%	19%	6%
Visitation: Union Officials	86	8%	92%	1	(2)	5	80%	0	0	20%
Wage Surveys (Union Participation)	49	3%	94%	4	33%	2	100%	0	0	0
Workweek (Definition)	290	2%	98%	19	31%	37	82%	9%	6%	3%
Zipper Clause	29	4%	96%	2	(2)	8	87%	13%	0	0
Other (Not Classified Above)	649	7%	92%	47	23%	143	67%	8%	1%	24%

NOTES: Where percentages in the "Ground-Rules" plus "Basic" columns do not add up to 100%, the difference represents situations of overlap--i.e., where the issues were discussed for approximately equivalent periods of time in both stages of negotiations.

The "Other" column under Third-Party Involvement does not include referrals to the Assistant Secretary (A/SLM)--reportedly involved in only two issues: Promotion Policies (1 response), Unit Definition (2 responses).

(1) -- Less than 0.5 percent.  
(2) -- Statistically negligible or indeterminate.



DIRECTOR

U.S. CIVIL SERVICE COMMISSION  
OFFICE OF LABOR-MANAGEMENT RELATIONS  
WASHINGTON, D.C. 20415

APPENDIX III

APPROVED GSA 0006-CSC-OT-C

October 1, 1973

DIRECTOR OF PERSONNEL

The Civil Service Commission in conjunction with the Office of Management and Budget will be conducting a Government-wide survey of the negotiating function under Executive Order 11491 during the months of October-November 1973.

The purpose of this study is to determine how the collective-bargaining process is working, with a view toward how it might be made to work better. It will be particularly responsive in meeting the widely expressed need for basic information, on a comprehensive basis, about the time required to negotiate collective-bargaining agreements under the Order.

The enclosed questionnaire is designed to elicit factual information on the experience and current status of negotiations at your activity--primarily in terms of the time and issues involved. Covering the entire collective-bargaining process, start to finish, the survey deals centrally with bargaining on ground rules for the conduct of negotiations and on the basic agreement itself. Preliminary information, on the pre-negotiation period, is sought even where bargaining has not been requested.

The questionnaire is post-paid and self-addressed to the CSC Regional Office serving your activity. The Labor Relations Officer there will monitor timely receipt of your response, and is available to answer any question you may have concerning the questionnaire.

When you have completed it, please fold the questionnaire twice (with the self-address showing on the outside) and staple it once for mailing. It must be received in the Regional Office by October 31, 1973.

Thanks in advance for your timely cooperation in this important venture.

Enclosure

Sincerely yours,

*Anthony F. Ingrascia*  
Anthony F. Ingrascia  
Director



1883-1973

MERIT PRINCIPLES ASSURE  
QUALITY AND EQUAL OPPORTUNITY

# CODE KEYS

## GROUP I. (AGENCY CODES) PLEASE SELECT CODES THAT MOST NEARLY DESCRIBE YOUR SITUATION.

- |                   |                          |
|-------------------|--------------------------|
| 01 Agriculture    | 15 USIA                  |
| 02 Commerce       | 16 Transportation        |
| 03 Air Force      | 17 Treasury              |
| 04 Army           | 18 AEC                   |
| 05 Navy           | 19 EPA                   |
| 06 National Guard | 20 GSA                   |
| 07 DSA            | 21 NASA                  |
| 08 HEW            | 22 NLRB                  |
| 09 HUD            | 23 VA                    |
| 10 Interior       | 24 GPO                   |
| 11 Justice        | 25 OEO                   |
| 12 Labor          | 26 TVA                   |
| 13 State          | 27 Non-Appropriated Fund |
| 14 AID            | 28 Other                 |

## GROUP II. (UNION CODES)

- |  |  |
|--|--|
| 01 Air Traffic Controllers (PATCO)               | 17 Service Employees (SEIU)                |
| 02 Boilermakers (BBF)                            | 18 State, County Employees (AFSCME)        |
| 03 Electrical Workers (IBEW)                     | 19 Teachers (AFT)                          |
| 04 Fire Fighters (IAFF)                          | 20 Typographers (ITU)                      |
| 05 Government Employees (AFGE)                   | 21 Other AFL-CIO                           |
| 06 Laborers (LIUNA)                              | 22 Air Traffic Specialists (NAATS)         |
| 07 Lithographers (LPIU)                          | 23 Customs Service Assn. (NCSA)            |
| 08 Machinists (IAM)                              | 24 Federal Employees (NFFE)                |
| 09 Masters, Mates & Pilots (MMP)                 | 25 Federal Police (IFFP)                   |
| 10 Metal Trades Councils (MTC)                   | 26 Fraternal Order of Police (FOP)         |
| 11 National Maritime Union (NMU)                 | 27 Government Employees (NAGE)             |
| 12 Office & Professional Employees (OPEIU)       | 28 National Treasury Employees (was NAIRE) |
| 13 Operating Engineers (IUOE)                    | 29 National Education Assn. (NEA)          |
| 14 Professional & Technical Engineers (was AFTE) | 30 Nurses (ANA)                            |
| 15 Retail Clerks (RCIA)                          | 31 Postal & Federal Employees (NAPFE)      |
| 16 Seafarers (SIU)                               | 32 Other Independent                       |

## GROUP III. (DATE CODES)

- |                                       |                                      |
|---------------------------------------|--------------------------------------|
| 1 Prior to Jan. 17, 1962              | 3 Jan. 1, 1970 through Nov. 23, 1971 |
| 2 Jan. 17, 1962 through Dec. 31, 1969 | 4 Nov. 24, 1971 to Present           |

## GROUP IV. (UNIT CODES)

- |                      |                      |
|----------------------|----------------------|
| 1 Under 50 employees | 4 251-350 employees  |
| 2 51-150 employees   | 5 351-500 employees  |
| 3 151-250 employees  | 6 Over 500 employees |

## GROUP V. (DURATION CODES)

- |               |                       |
|---------------|-----------------------|
| 1 One year    | 4 Over three years    |
| 2 Two years   | 5 Automatic renewal   |
| 3 Three years | 6 Indefinite duration |

DETACH THIS TEARSHEET FOR CONVENIENT  
REFERENCE, COMPLETE ATTACHED QUESTIONNAIRE,  
FOLD TWICE, STAPLE OR SEAL, AND MAIL

**GROUP VI. (TERM CODES)**

- |                         |                         |
|-------------------------|-------------------------|
| 1 Under one week        | 6 Nine to 12 months     |
| 2 One week to one month | 7 Twelve to 18 months   |
| 3 One to three months   | 8 Eighteen to 24 months |
| 4 Three to six months   | 9 Over 24 months        |
| 5 Six to nine months    |                         |

**GROUP VII. (OFFICIAL TIME CODES)**

- |                                     |                                 |
|-------------------------------------|---------------------------------|
| 1 Straight time under 40 hours max. | 4 Half-time up to 80 hours max. |
| 2 Straight time up to 40 hours max. | 5 Half-time over 80 hours max.  |
| 3 Half-time under 80 hours max.     | 6 Other                         |

**GROUP VIII. (THIRD PARTY CODES)**

- |                                    |                                     |
|------------------------------------|-------------------------------------|
| 1 Federal Mediation Service (FMCS) | 4 Assistant Secretary (A/SLMR-LMSA) |
| 2 Impasses Panel (FSIP)            | 5 Other                             |
| 3 Council (FLRC)                   |                                     |

**GROUP IX. (SPECIALTY CODES)**

- |                         |                     |
|-------------------------|---------------------|
| 1 Ground-rules stage    | 5 Exception refused |
| 2 Basic-agreement stage | 6 Management        |
| 3 Exception granted     | 7 Union             |
| 4 Both                  | 8 Neither           |

**GROUP X. (SUBJECT-MATTER CODES)**

- |   |   |
|---|---|
| 01 Annual Leave                                 | 25 Negotiating Team: Composition        |
| 02 Arbitration Hearing: Official Time           | 26 Official Time for Negotiations       |
| 03 Arbitration Procedure (Scope)                | 27 Overtime Policies, Practices         |
| 04 Arbitrator's Authority: Final Step           | 28 Parking and Transportation           |
| 05 Arbitrator Selection, Payment                | 29 Past Practices Clause                |
| 06 Assignment Clause                            | 30 Printing, Distributing Agreement     |
| 07 Cafeteria Services                           | 31 Promotion Policies, Procedures       |
| 08 Call-In Allowance                            | 32 Reduction-in-Force Provision         |
| 09 Clean-Up (Wash-Up) Time                      | 33 Seniority                            |
| 10 Clothing and Uniforms                        | 34 Sick Leave                           |
| 11 Discipline Clause                            | 35 Stewards: Time Allowances            |
| 12 Dues Withholding (Charge)                    | 36 Subcontracting (Contracting Out)     |
| 13 Dues Withholding (General)                   | 37 Time (Productivity) Studies          |
| 14 EEO Joint Committee                          | 38 Tools and Equipment                  |
| 15 EEO (Nondiscrimination, General)             | 39 Training (General)                   |
| 16 Environmental Pay                            | 40 Transfer Clause                      |
| 17 Facilities, Services (Union Use)             | 41 Travel Time                          |
| 18 Grievance Meetings: Representation Presence  | 42 Unit Definition (Recognition Clause) |
| 19 Grievance Procedure (Scope)                  | 43 Unit Work (Limitations)              |
| 20 Health and Safety (General)                  | 44 Visitation: Union Officials          |
| 21 Joint Committees (Except EEO)                | 45 Wage Surveys (Union Participation)   |
| 22 Management Rights                            | 46 Workweek (Definition)                |
| 23 Meal and/or Rest Periods                     | 47 Zipper Clause                        |
| 24 Miscellaneous Leave (Except Annual and Sick) | 48 Other (Not Classified Above)         |

CSC REGION (Leave Blank)

PLEASE COMPLETE ALL BOXES BELOW;  
ANSWER ALL QUESTIONS, ESTIMATING OR  
APPROXIMATING WHERE NECESSARY. (TYPE  
OR PRINT ALL ANSWERS.)

OLMR NO. (Leave Blank)

DEPARTMENT OR AGENCY/ACTIVITY • enter code from GROUP I here = <input type="text"/> CC 6-7	UNION/LOCAL • enter code from GROUP II here = <input type="text"/> CC 8-9
Department _____ Agency/Subdiv. _____ Installation _____ City, State _____	Organization _____ Local No. _____
RECOGNITION DATE • enter code from GROUP III here = <input type="text"/> CC 10	AGREEMENT COVERAGE (check one) SINGLE-UNIT <input checked="" type="checkbox"/> MULTI-UNIT <input checked="" type="checkbox"/> CC 11 • enter code from GROUP IV here = <input type="text"/> CC 12
EFFECTIVE DATE (Current Agreement) • enter code from GROUP III here = <input type="text"/> CC 14	Number of Employees (check one) Covered by Agreement: GS <input checked="" type="checkbox"/> Both <input checked="" type="checkbox"/> CC 13 WG <input checked="" type="checkbox"/> Total _____
TERMINATION DATE (Current Agreement) • enter code from GROUP V here = <input type="text"/> CC 15	

#### I. Preliminary Profile

01. Is the unit (check one) covered by:  
a. basic negotiated agreement? ☒ CC 17  
b. dues-withholding agreement? ☒  
c. both? ☒  
d. neither? ☒
02. If there is no basic agreement (check one), what is the parties' current status?  
a. Negotiations not requested ☒ CC 18  
b. Negotiations requested; have not begun yet ☒  
c. Negotiations started; not completed yet ☒  
d. Negotiations completed; agreement awaiting approval ☒
03. How much time elapsed between the date of recognition and the request to negotiate initial basic agreement?  
• enter code from GROUP VI here ☐ CC 19
04. Did the effective date of the dues-withholding agreement (check one) precede the effective date of initial basic agreement? Yes ☒ No ☒ CC 20
05. How much time elapsed between:  
a. certification, or recognition, and the effective date of the dues-withholding agreement?  
• enter code from GROUP VI here ☐ CC 21  
b. date of the dues-withholding agreement and the effective date of initial basic agreement?  
• enter code from GROUP VI here ☐ CC 22  
c. date of the dues-withholding agreement and (where no initial basic agreement has been completed) the present?  
• enter code from GROUP VI here ☐ CC 23

PLEASE CONFINE "X" TO APPROPRIATE ANSWER BOX

IF NEGOTIATIONS FOR INITIAL BASIC AGREEMENT HAVE BEEN REQUESTED  
OR COMPLETED, PLEASE ANSWER ALL QUESTIONS BELOW.

II. Factors Related to Time Required to Negotiate Agreements

A. BACKGROUND

1. How much time elapsed between the date of recognition and the effective date of the initial agreement?
  - enter code from GROUP VI here ☐ CC 25
  - a. Which party (check one) made the original request to negotiate the current agreement?
    - Management ☒ Union ☐ CC 26
2. Is the current agreement (check one) ... Initial ☒ Renegotiated ☐ CC 27
3. At what stage (check one) of the collective-bargaining process are the parties now?
  - a. Mid-term in the current agreement; negotiations for successor agreement not requested yet. ☒
  - b. Previous agreement has expired; negotiations for new agreement not requested yet. ☐ CC 28
  - c. Negotiations for new agreement have been requested; have not begun yet. ☐
- d. Negotiations for new agreement are under way now. ☒ 4
- e. Negotiations for new agreement have been completed; currently awaiting approval. ☐ 5
4. How much time elapsed between:
  - a. request to negotiate and actual start of negotiations (including ground rules)?
    - enter code from GROUP VI here ☐ CC 29
  - b. request to negotiate and effective date of current (or most recent) agreement?
    - enter code from GROUP VI here ☐ CC 30
5. If the start of negotiations was delayed after the request of either party to negotiate or after expiration of the previous agreement, why (explain reasons) the delay? \_\_\_\_\_

B. TIME IN NEGOTIATIONS

6. What time frame was covered by negotiations on ground rules?
  - enter code from GROUP VI here ☐ CC 32
  - a. How many (enter number, using 0 as first digit if less than 10) negotiating sessions were held on ground rules? ☐ CC 33-34
  - b. How frequent (check one) were these sessions on ground rules?
    - Daily ☒ Weekly ☐ CC 35
    - Monthly ☐ Less often ☐ 4
  - c. How many hours (enter number) did each ground rules session average? ☐ CC 36
7. How much time elapsed between completion of ground rules and beginning of basic-agreement negotiations?
  - enter code from GROUP VI here ☐ CC 37
8. What calendar period was covered by negotiations on the basic agreement—as distinguished from ground rules?
  - enter code from GROUP VI here ☐ CC 38
  - a. How many (enter number, using 0 as first digit if less than 10) negotiating sessions were held on the basic agreement? ☐ CC 39-40
- b. How frequent (check one) were these sessions on the basic agreement?
  - Daily ☒ Weekly ☐ CC 41
  - Monthly ☐ Less often ☐ 4
- c. How many hours (enter number) did each basic-agreement session average? ☐ CC 42
9. How much time elapsed between:
  - a. settlement on all agreement terms (ground rules and basic) and the date it was sent forward for agency approval?
    - enter code from GROUP VI here ☐ CC 43
  - b. settlement on all agreement terms (ground rules and basic) and the date of approval?
    - enter code from GROUP VI here ☐ CC 44
10. Were any special problems or circumstances (check one) involved in the approval process? (If so, explain.) Yes ☒ No ☐ CC 45

C. ISSUES IN NEGOTIATIONS

11. What issues (in descending order, left to right) consumed the most time in negotiations, over-all? (Below each, designate whether it was discussed primarily in the ground-rules or basic-agreement stage of negotiations.)
  - enter codes from GROUP X here \_\_\_\_\_
  - ☐ ☐ ☐ ☐ ☐ ☐
  - CC 47-48 CC 49-50 CC 51-52 CC 53-54 CC 55-56 CC 57-58
- enter codes from GROUP IX here \_\_\_\_\_
- ☐ ☐ ☐ ☐ ☐ ☐
- CC 59 CC 60 CC 61 CC 62 CC 63 CC 64
12. Were there requests (check one) for exceptions to regulations in connection with the negotiations? Yes ☒ No ☐ CC 65

(CONTINUED)

PLEASE CONFINE "X" TO APPROPRIATE ANSWER BOX

#### D. THIRD-PARTY INVOLVEMENT

[illegible]

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ATTACHMENT 8

THE WHITE HOUSE,  
Washington, September 6, 1972.

Memorandum to heads of departments and agencies.

This year the Federal Government marked the tenth anniversary of its labor relations program, which now covers more than one million Federal employees.

I support collective bargaining for Federal workers, and I have demonstrated that support during the past three years by strengthening the program with the issuance of two Executive orders broadening the scope of bargaining.

Now, at the end of the first decade of this, the largest organized labor relations program in the Nation, I am calling on you to make this program even more effective. At my request, the Chairman of the U.S. Civil Service Commission and the Director of the Office of Management and Budget have drawn up a set of guidelines for Federal agencies under the Federal labor-management relations program. These guidelines are a solid step forward and should be implemented as quickly as possible.

If we can make this program work better, we can make Government work better.

I cannot urge you too strongly to take a personal interest in the labor relations activities in your agency and to make your managers aware of your interest. You should impress on your top managers that good labor-management relations has a high priority in my Administration. It is as much a part of their overall managerial responsibility as is the accomplishment of their basic mission, whether it be in the defense of our country or in the effective delivery of services to the public.

RICHARD NIXON.

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, D.C., September 13, 1972.

Memorandum for heads of departments and agencies.

In his memorandum of September 6, 1972, President Nixon strongly reaffirmed his desire to bring about more meaningful collective bargaining for Federal employees. To this end, he has called on the heads of departments and agencies to join in a directed effort to make the program even more effective. He has asked that positive and constructive labor-management relations be considered a matter of high priority in his administration.

Executive Order 11491, as amended, directs the U.S. Civil Service Commission, in conjunction with the Office of Management and Budget, to establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service. Under this authority, and in order to promote the efforts which the President has urged in his memorandum, CSC and OMB have developed the attached "Guidelines for the Management and Organization of Agency Responsibilities under the Federal Labor-Management Relations Program."

The Guidelines are fundamental precepts for developing a positive and constructive bilateral relationship with Federal employee unions and for use by agency management in assessing program adequacy. Although they are applicable throughout the Federal establishment, full consideration was given to the wide diversity of agency roles and missions and the varying stages of program development among agencies during preparation of the Guidelines. As a result, the Guidelines are flexible enough to fit a broad range of program requirements.

Agency heads are requested to assure that the Guidelines are applied to the maximum extent feasible. The Commission through its evaluation process and OMB in its regular budget review responsibilities, will periodically analyze

agency performance in implementing the Guidelines. In addition, the Commission, through its Office of Labor-Management Relations, will continue to furnish technical advice and guidance to agencies on a day-to-day basis.

ROBERT E. HAMPTON,  
*Chairman, U.S. Civil Service Commission.*  
CASPAR W. WEINBERGER,  
*Director, Office of Management and Budget.*

GUIDELINES FOR THE MANAGEMENT AND ORGANIZATION OF AGENCY RESPONSIBILITIES UNDER THE FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM—SEPTEMBER 1972

I. MANAGEMENT FRAMEWORK

*A. Objective: Develop and issue a clear statement of management policy and philosophy concerning labor relations*

1. *Need for broad general policy.*—The President has stated, in the preamble to Executive Order 11491, as amended, the Government's general labor relations policy. As a means of providing all agency representatives (managers, supervisors, staff support) with overall guidance in bilateral dealings, the head of the agency, primary national subdivision or subordinate activities at all levels should affirm in writing acceptance and support for such policy and spell out the philosophy and approach to be followed in implementing it.

2. *Content of policy statement.*—The statement should clearly define principles to be observed in management relations with unions. This involves such matters as management's commitment in the public interest to modern and progressive work practices, employee and union rights and responsibilities, high standards of employee performance, management's positive approach to third party resolution of disputes, improved well-being of employees through maximum appropriate participation in establishing personnel policies affecting them on the job, and the importance of sound labor relations to mission accomplishment.

3. *Interface of management framework with organization framework.*—Agency organization of labor relations activities should reflect the conviction that the growing dimensions of union involvement in the formulation and implementation of personnel policies and practices affecting employees they represent must become an integral part of agency approach to personnel management in order to maximize the cooperative and productive benefits of the relationship. There should be visible, top level commitment to the total personnel management program. Specific emphasis should be given in allocation and utilization of personnel management resources to the new dimensions of labor relations which continue to transform many personnel decisions from a unilateral to a bilateral process. Such a total integration of labor relations responsibilities in personnel management is reflected and intended throughout these Guidelines.

*B. Objective: Prepare plans and resource estimates required to achieve labor relations goals*

1. *Labor relations program plan.*—Guided by its identified management policy and philosophy, each agency should prepare a comprehensive plan for achieving its labor relations objectives. Short-range planning period should cover the fiscal year about to begin and the subsequent budget year. Long-range planning period generally will cover the next five years. These plans should be the products of two specific steps, described below.

a. *State short-range and long-range labor relations program objectives.*—Agencies should prepare written program objectives for labor relations activities. These objectives should be formulated according to management's consensus of what are desirable and practical goals for the agency to accomplish through its labor relations efforts with the understanding that management is only one of the parties to a bilateral relationship.

Short-range objectives may, for example, be (1) reorganizing the personnel staff at the headquarters to provide more effective labor relations support for agency field staff or (2) reviewing agency regulations relating to matters within the scope of bargaining under Executive Order 11491 to insure locus of

authority rests at the most effective level for bilateral dealings between unions and agency managers, or (3) reviewing and improving, if necessary, procedures for agency approval of negotiated agreements.

Long-range objectives might include (1) efforts to deal more effectively with fragmented exclusive units through possible use of multi-unit bargaining approach, or (2) seeking to enlist union support for general improvements in quality of public service and implementation of public policy through such matters as improved worker productivity, safe work conditions and practices, or (3) strengthening line supervisor and middle management perception and performance of their role as management representatives.

b. *Develop strategies to achieve desired labor relations objectives.*—The other necessary step in development of an agency's labor relations plan is to establish priorities and methods by which these objectives are to be achieved. The short-range strategies resulting from this process generally will be more specific and more fully developed than those applied to the agency's long-range labor relations objectives.

2. *Develop a resource plan for agency labor relations activities for the fiscal year about to begin and for the subsequent budget year.*—Estimates for the agency's personnel management function should reflect the requirements necessary to accomplish the labor relations objectives formulated according to the program planning steps outlined above. The resource estimates should be used as a management tool to guide the agency in its obligation of manpower and money toward meeting its current labor relations plan. Amount of funds appropriated may require adjustment of resource estimates, however the full estimate should serve as the basis for relating the planned labor relations activity with the associated expenditures. It is not necessary to include indirect and overhead costs for this purpose. Similarly, the portioned salary cost for labor relations activities performed by line managers as part of their normal functions should not be included. The labor relations training budget estimate is summarized below.

The budget estimate should include the annual salary cost of agency staff personnel involved in activities related directly to labor relations. Full-time and part-time personnel should be included roughly to the extent that they participate in labor relations activities.

Other significant costs that are related directly to the labor relations effort should be included such as training, expense of third-party procedures, consulting fees or staff travel.

*C. Objective: Develop a systematic approach for planning agency labor relations training*

1. *Identify agency-wide labor relations training needs.*—To determine training needs, the agency manager should initially define, in some detail, the skills required to perform effectively the various labor relations functions in the agency. That is, with what degree of skill should the various levels of supervision and management in the organization be able to comprehend and apply the rights and responsibilities designated for management representative under E.O. 11491, as amended. After defining required skills, the manager should inventory abilities possessed by present agency personnel as a guide to the magnitude of training needs.

2. *Develop a program to meet the training needs.*—After agency training needs have been identified, alternative methods of meeting the needs should be considered. With each method, whether it be hiring skilled personnel, training current personnel through agency or outside means, redistributing current skilled employees, cost estimates should be developed so the agency's needs may be met efficiently and economically with due consideration to long, as well as short, range objectives.

These estimates should include all relevant costs. Agency administered training, for example, should include costs of development, facilities, instructors, and participants. The Civil Service Commission has developed a Training Cost Model which agencies may find useful in making these estimates. The Commission also has developed a basic curriculum of labor relations courses designed to meet training needs most common to all agencies.

*D. Objective: Develop a systematic approach for planning and negotiating agreements*

Successful negotiation of agreements requires systematic planning and high level attention. Major areas of concern include, but are not limited to:

1. Select and train management's negotiating team.
2. Establish management's bargaining objectives and develop management proposals where appropriate. This must involve top and line management as well as total personnel management input.
3. Anticipate union proposals.
4. Attempt to merge management's objectives with anticipated union proposals for analysis.
5. Estimate impact of each proposal in terms of cost-benefit ratio, possible problems in administering it, compliance with Order, employee well-being and performance, management effectiveness and mission accomplishment.
6. Settle on bargaining strategies and priorities, involving both line and staff input.
7. Assign management's negotiating team with appropriate authority to bind management to the terms of a labor-management agreement.
8. When mutual agreement is not possible, determine management position and representation in third-party proceedings.
9. Summarize the key negotiation proceedings for use in administration of the agreement and for future negotiation planning.

*E. Objective: Conduct and annual review and evaluation of the labor relations program*

1. *Report progress in meeting labor relations objectives.*—A system for evaluating agency-wide progress should be established at the headquarters level. Each primary national subdivision, major bureau or command should be requested to submit an evaluation of its labor relations activities over the past year to agency headquarters. This report should cover progress made toward established program objectives and should highlight major problems which interfered with achieving those objectives. It should also discuss activities which were not included in the agency's statement of objectives and analyze the nature of such activities for possible consideration in future plans. Evaluators should be careful not to measure program effectiveness solely against achievement of planned objectives.

Events may have proved the objective unwise, untimely or unobtainable. An assessment should be made as to the appropriateness of the objectives and possible redirection. Finally, reports should discuss the extent to which actual expenditures exceeded or fell short of the budgeted expenditures for labor relations to assist management in subsequent planning and budgeting.

2. *Evaluate agency labor relations training output.*—Labor relations training activity should be reviewed annually to evaluate its success in fulfilling the agency's skill needs. The review should focus, if possible, on the degree of skills increase on the part of those involved in the labor relations function. The revision of training materials, the need for further training or retraining, and the efficiency of the training function should also be considered. These qualitative analyses should be in addition to any reporting of numbers of persons trained, hours of training conducted, and other quantitative output measurements.

3. *Review agency-wide performance in its bilateral negotiation of labor agreements.*—Using the record of negotiation proceedings prepared at the conclusion of each collective bargaining agreement as outlined above, each agency should determine the extent of its overall success in achieving the objectives set for its negotiators. This process should attempt to highlight strategies which have proved to be particularly effective in reaching agreements consistent with management's intentions and to identify workable tradeoffs. This process may also reveal areas in which management can take appropriate permissible unilateral steps to improve the conduct of its operations.

## II. ORGANIZATION FRAMEWORK

A. *Objective: Insure top management recognition of total personnel management with special emphasis of labor relations.—Insure adequate line and staff support of the program*

1. *Organization of personnel management function.*—The management of human resources, whether represented by labor organization or not, requires the personnel management function (within which labor relations responsibilities are totally integrated) to have direct access to the head or principal deputy of an agency, activity or installation. Agency policy and program development should incorporate the total personnel management input in the formulative stages of that development.

2. *Assign appropriate responsibility and authority for agency labor relations matters to line supervisors/managers.*—Sound labor relations is a line management concern. Since the line supervisor/manager so deeply affects labor relations policy and in turn is so deeply affected by that policy and by the provisions of negotiated labor agreements, agency management should provide that sufficient and appropriate responsibilities and authority are delegated to the line supervisor/manager in order for him to direct the workforce within the terms of a negotiated agreement and represent higher level management in a labor relations capacity.

3. *Assign appropriate responsibility and authority to the personnel staff for agency labor relations activities.*—As with the duties and authorities of line supervisors and managers, the agency personnel staff at appropriate levels, requires responsibilities and decision-making authority, as delegated by the head of an agency, to be that agency's primary interface with labor organizations in all aspects of labor relations. It will normally serve management's best interests to delegate to this function the authority to represent the agency in dealing with unions, in third-party proceedings, and in conjunction with line management, preparing and conducting negotiations with labor organizations and implementing and administering the resulting agreement.

4. *Engage line management in pre-negotiation planning and in contract administration.*—Line management participation is essential in effective labor relations. At the supervisory level, management has the benefit of frequent, direct contact with rank and file employees which can help identify employee needs and concerns and anticipate union demands. Line managers also can identify provisions that affect efficiency and effectiveness of their division's operations. They know best which provisions will place undesirable and/or unworkable limits on the authority needed to meet agency goals and missions.

5. *Provide line management at all levels with labor relations staff support.*—The line supervisor's/manager's need for authoritative technical and policy guidance on labor relations matters of agency-wide significance should be furnished by staff support aware of the supervisor's/manager's specific area of responsibility and able to interpret the agency's official position on a particular question of policy. Each agency's particular circumstance should dictate the appropriate pattern.

6. *When appropriate, utilize external sources of labor relations skills for guidance and assistance.*—Within government, the U.S. Civil Service Commission through its Office of Labor-Management Relations and its Regional Labor Relations Officers, furnishes day-to-day technical advice and guidance to agencies in all aspects of Federal labor relations. This includes coordination of inter-agency activities in all facets of labor relations. The Commission stands ready to assist agencies in labor relations training through its Labor Relations Training Center. Experts from other agencies can also be called on for assisting an agency's labor relations staff. Outside government, numerous private and academic institutions and experts can offer assistance in specialized areas; however, all agencies should insure that capabilities do not exist within government before turning to outside sources.

## ATTACHMENT 9

SPECIAL LABOR AGREEMENT INFORMATION RETRIEVAL SYSTEM (LAIRS) SURVEY,  
APRIL 1974

The distribution of exclusive units by number of employees shows that 84% of recognitions cover fewer than 500 employees, and more than one half (53%) cover less than 100. Coupled with the fact that the average unit size is 312 employees (corresponding figure for 1972 was 319), there is a strong suggestion here that fragmentation of bargaining units is a prominent characteristic of the Federal labor relations program.

As indicated in the report, 1,283 out of 2,400 agreements contain provisions for binding arbitration. 615,469 employees are covered by the provision of these arbitration clauses. Records available in our office show that more than 372 grievance-arbitration awards have been rendered since the inception of Executive Order 10988. (This includes a large number of arbitrations connected with unit-determination issues under E.O. 10988.) Additionally, 161 agreements covering 72,509 employees provide for advisory arbitration in adverse action cases. Whether the nature of the arbitrations is binding or advisory, 1,452 agreements covering 643,727 employees permit official time to be used by employee participants in the process. Frequently this also includes, in addition to aggrieved employee, employees who are representatives of the union or witnesses called by either party. A survey of these awards reveals that a variety of issues have been addressed. Included are: pay policies, incentive awards, overtime, promotion, wage survey, sick leave, annual leave, performance evaluation, discipline, work scheduling, work assignment, training and representation.

Subject	Number of agreements	Number of employees covered
Promotion policy	1,579	717,912
Joint promotion committee	112	62,019
Joint performance review committee	92	44,513
Union member(s) on promotion panel	197	83,873
Union participation (wage survey)	512	246,087
Joint EEO committee	436	294,773
Physical examinations	156	104,583
Drug abuse clause	61	50,350
Alcoholism clause	82	65,189
Grievance procedure	1,989	820,104
Discipline policy	1,300	589,274
Pay policy clause	225	118,922
Call-in allowance	543	246,654
Environmental pay	335	189,959
Seniority	481	251,391
Union review (RIF)	300	184,006
Technological displacement	236	139,416
Safety provision	1,521	651,637
Safety clothing	696	350,091
Safety equipment	744	370,566
Joint safety committee	886	441,923
Overtime clause	1,579	711,923
Compensatory time	498	229,075
Call-in limitation	150	55,640
Hours guarantee	383	172,920
Excused time (training)	359	217,271
Cafeteria services	190	97,364
Parking	436	318,511
Work equipment	326	153,871
Tools	239	136,668
Joint suggestion/awards committee	367	231,034
Leave (hold union office)	727	382,367
Paid-time allowances (stewards)	668	308,062
Use of space (union)	1,179	678,597
Use of telephone (union)	299	260,597
Mail privilege (union)	311	114,255

ATTACHMENT 10

SUMMARY OF COMPARISONS OF RETIREMENT, LIFE INSURANCE, HEALTH BENEFITS  
AND OTHER MAJOR EMPLOYEE BENEFIT PROGRAMS, DECEMBER 1973

The U.S. Civil Service Commission has recently completed a study of retirement, life insurance, health benefits, holiday, and sick and annual leave programs provided by 25 leading employers.

Recognizing that employers spend benefit dollars in different ways, often providing one benefit at the expense of another, the Commission wanted to find out how the government compares with these other employers on the basis of 6 fringe benefits, individually and overall.

Employer contribution to life insurance, age and service requirements for optional retirement, number of holidays granted each year, health insurance coverage for surgical expenses—these are but a few of the benefit features the CSC considered.

Various features of the other employers' benefit programs were compared to the Federal counterpart and rated as being comparable to, or more or less liberal than, the Federal. The same determination was made for each benefit and then for the total benefits package. The results were:

One employer provided retirement benefits more liberal than the government's; 14 provided comparable benefits; 10 provided less liberal benefits;

Three employers provided a holiday, sick and annual leave program more liberal than the government's; 3 provided comparable programs; 19 provided less liberal programs;

One employer provided a health insurance program more liberal than the government's; 7 provided comparable programs; 17 provided less liberal programs; and

Five employers provided life insurance programs more liberal than the government's; 3 provided comparable programs; 17 provided less liberal programs.

Overall, of the 25 other employers included in the sample only the State of New York offers its employees a fringe benefits package that is more liberal than the Federal government's. The benefits packages offered by Baltimore, General Motors, Maryland, St. Louis, and U.S. Steel are comparable to the government package. Within their packages, some individual benefits are more liberal, while other are comparable, and still others are less liberal. A limited benefit feature in one category can be balanced or more than offset by a more liberal feature in another category.

Private employers:

Bank of America, E. I. du Pont de Nemours & Co., General Electric, General Motors Corp., International Business Machines Corp., Pacific Gas & Electric Co., J. C. Penney Co., Inc., The Prudential Insurance Co. of America, Standard Oil Co. (New Jersey), Traveler's Insurance Co., United Airlines, and United States Steel Corp.

Public employers:

Baltimore, California, Dallas, Georgia, Maryland, Michigan, Minnesota, Mississippi, New York State, Phoenix, St. Louis, Virginia, and Wisconsin.

A T T A C H M E N T N O . 1 1

# Comparison of Executive Order 11491, as Amended, to Bills on Federal Labor Management Relations

## TITLE

Executive Order 11491, amended by E.O. 11616	H. R. 10700 (Henderson)	H. R. 13 (Brasco)/S. 351 (McGee)	H. R. 9784 (Ford)
Labor-Management Relations in the Federal Service.	Federal Service Labor-Management Act of 1973 (To amend Sec. 2(a) Subchapter 1 of chapter 71 of title 5, USC; as "Subchapter I—Employee Labor Organizations".)	Federal Employee Labor-Management Act of 1973.	Federal Employee Labor-Management Act of 1973.

## PREAMBLE

Public interest requires high standards of employee performance and modern work practices to improve em- ployee performance and efficiency. Efficient administration and em- ployee well-being require orderly and constructive relationships be- tween labor organizations and man- agement officials. Clear statement of respective rights and obligations needed.	Participation of employees of the executive branch, through labor organizations of their own choosing, in the formulation and implementa- tion of personnel policies and prac- tices and matters affecting working conditions, is in the public interest; and collective bargaining rights which are consistent with the public service and the efficient administra- tion of Executive agencies shall be enjoyed by labor organizations rep- resenting employees. [7101]	Participation of employees of the Federal Government through labor organizations of their own choosing in decisions which affect them con- tributes to the effective conduct of public business. Therefore, labor or- ganizations and collective bargaining in the Federal service are in the public interest. [101(a)]	Statutory protection of the right of employees to organize and bargain collectively safeguards the public interest and contributes to the effec- tive conduct of public business. Labor organizations and collective bargaining in the public interest. Act prescribes rights and obligations of Federal employees and establishes procedures to meet special require- ments and needs of the Federal Government. [2(a)]
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## POLICY

Employee free right to join or not join labor organizations. Except as noted below right to assist labor	Similar. Elaborates on right to petition Congress by including "right to fur- nish information to either House of	Employee protected in exercise of right to form, join, assist organiza- tions; with prohibition on discourag-	Similar to HR 13, except agency man- agement prohibited from either en- couraging or discouraging member-
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ship other than requiring as condition of employment union membership and payment of dues (union shop) or pay equivalent dues (agency shop). Supervisors and managers can be represented together with rank and file employees under certain conditions. [2(a); 5(a)(c); 6(f); (10).]

ing membership, but does not prohibit encouraging membership. At request of organization employees required to become members (union shop) or pay equivalent dues (agency shop) as condition of employment. Would permit representation of supervisors and managers with rank-and-file employees. [201(j)(k); 101(b); 701(a)(2).]

Same limitations as noted above.

Does not limit supervisors and managers from being involved in management of labor organizations. [101]

Congress, or to a committee or member thereof". [7102; 7103(b)(1); 7117(a)(2); 7117(c).]

organization extends to participation in its management and acting as a representative, including presentation of its views to officials of the Executive branch, the Congress, or other appropriate authority. Head of agency to assure that employees informed of rights and that no interference, restraint, coercion, or discrimination is practiced within agency to encourage or discourage membership in a labor organization. [1(a).]

Similar. [7103(b)(2)]

Right to be an officer or representative, except a supervisor may not participate in the management or representation of a labor organization (other than as excepted by sec. 24) nor may an employee where there would be conflict or apparent conflict of interest or incompatibility with law or official duties. [1(b)]

## DEFINITIONS

Agency means any department, bureau, activity, or organization of the U.S. Government which employs employees as defined below or any person acting as an agent thereof [3(c)]

Agency means any department, bureau, activity, or organization of the U.S. Government which employs employees as defined in 201(b), referenced below.

Similar but Tennessee Valley Authority specifically excluded. Also President can make exceptions due to national security requirements and considerations; and head of agency, with approval of Authority, can make exceptions related to internal security of agency. [7103(a)(3)]

Agency: an Executive dept., a Govt. corporation, and an independent establishment as defined in section 104 of title 5, USC, except the General Accounting Office. [2(a)]

Executive Order 11491, amended by E.O. 11616	H.R. 10700 (Henderson)	H.R. 13 (Brasco)/S. 351 (McGee)	H.R. 9784 (Ford)
<i>Employee:</i> an employee of an agency and an employee of a nonappropriated fund instrumentality of the U.S. but does not include, for the purpose of exclusive recognition or national consultation rights, a supervisor (except as provided in sec. 24) [2(b)]	Similar, but includes individuals no longer employed relative to an unfair labor practice under section 7109; and those employed at Veterans' Canteen Service, Veterans Administration, described in section 5102 (c)(14) of USC 5. Specifically excludes employees in Foreign Service who are paid under Chapter 14 or 14A or section 2385(d) of title 22; aliens and noncitizens employed outside US; employees stationed in Canal Zone; and members of the uniformed services. President can exclude employees working in locations where intelligence, investigative, or security work is performed and national security requirements and considerations are involved. [7103(a)(2)]	Definition of employee is broad-brush and expanded to include supervisors and managers, security agency employees, employees in competitive service of legislative and judicial branches, employees in Library of Congress, in Government Printing Office and Federal Reserve System, but excluding US Postal Service. (Also see reference below concerning coverage as contrasted to Order.) [201(b)]	Similar to HR 13, but specifically includes individuals no longer employed relative to an ULP under section 10 of Act, and definitions for manager and supervisor differ. [3(b)(6)(c)]
<i>Supervisor:</i> an employee having authority, in the interest of an agency to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [2(c)]	Similar [7103 (a)(8)]	Definition of supervisor in describing authority is similar, provided that employee's pay is at or above top step for GS-10, and that employee has direct responsibility for at least ten employees. [201(j)]	Supervisor: definition similar to Order, except with respect to firefighters wherein term to include only employees who perform a preponderance of specified acts of authority. [3(f)]
<i>Guard:</i> an employee assigned to enforce against employees and other persons rules to protect agency	Similar [7103(a)(11)]	No definition for guards, and does not provide any limitation on their representation or inclusion in mixed	No definition for guard, but provides definition for public safety officer: any employee engaged in (1) enforcement

of criminal laws including highway patrol; (2) a correctional program, facility, or institution where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers or parolees; or (3) a court having criminal or juvenile delinquent jurisdiction where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees. [3(h)]

Labor organization: definition similar to HR 13, except does not exclude organizations which assist or participate in strikes or related activities prohibited under Order. [3(d)]

units based on potential conflict-of-interest problems.

Labor organization: definition similar to 10700 except it means any national or international union, federation, council or department, or any affiliate thereof . . . in which employees participate and pay dues; and which exists for primary purpose of dealing with agencies concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Does not exclude organization which assists or participates in strike against Government, etc. [201(d)]

Management official. Similar to HR 13 [3(f)]

Management official. Employee in position which presents conflict of interest, or potential conflict of interest, between an agency and employees or who formulates, determines, or effectuates agency's policies and who has discretion in performance of his job, with power to modify employer's established policies. [201(k)]

property or the safety of persons on agency premises, or to maintain law and order in areas or facilities under Govt. control. [2(d)]

Similar, except organization must have as its primary purpose dealings with an agency concerning grievances, etc., and shall not include an organization whose basic purpose is purely social, fraternal, or limited to special interest objectives which are only incidentally related to terms and conditions of employment. Also adds that cannot deny membership because of preferential or nonpreferential civil service status. [7103(a)(4)]

Similar. Management official means an employee who formulates, determines, effectively influences, or effectuates policies of an agency, or who, in the performance of his duties, has discretion to modify the established policies of an agency. [7103(a)(9)]

*Labor Organization:* a lawful organization in which employees participate and which exists for the purpose, in whole or in part, of dealings with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees, but does not include organizations which consist of managers or supervisors (except as provided in sec. 24); assists or participates in a strike against the Govt. or imposes a duty or obligation to conduct, assist or participate in such a strike; advocates overthrow of the constitutional form of the Govt.; or discriminates on race, color, creed, sex, age, or national origin. [2(e)]

*Agency Management:* the agency head and all mgt. officials, supervisors, and other representatives of mgt. having authority to act for the agency on any matters relating to the implementation of the agency LMR program. [2(f)]

Executive Order 11491, amended by E.O. 11616	H. R. 10700 (Henderson)	H. R. 13 (Brasco)/S. 351 (McGee)	H. R. 9784 (Ford)
<b>Council:</b> The Federal Labor Relations Council established by Order [2(g)].	<b>Authority:</b> means Federal Labor Relations Authority established under section 7104, replacing Council [7103(a)(5); 7104; 7111].	<b>Authority:</b> Means Federal Labor Relations Authority provided in section 301, replacing Council. [201(e)].	<b>Board:</b> The Federal Employees Labor Relations Board established by section 4 of Act, replacing Council, and A/S LMR under Order.
<b>Panel:</b> The Federal Service Impasses Panel established by Order. [2(h)].	Duties of Panel performed by Federal Labor Relations Authority (Authority). [7103(a)(5); 7104; 7111].	Duties of Panel assumed by Authority. [301, 401].	No provision.
<b>Assistant Secretary:</b> The Assistant Secretary of Labor for Labor-Management Relations. [2(i)].	Most of duties of A/S LMR performed by Authority established under section 7104.	Most of A/S LMR duties performed by Authority established by section 301.	No provision. Most functions assumed by Board referenced above.
	<b>Person:</b> an individual, labor organization, or agency [7103(a)(1)].	<b>Person:</b> means one or more individuals, labor organizations, or agencies of the U.S. Government. [201(a)].	<b>Person:</b> Same as HR 13. [3(a)].
	<b>Agreement:</b> an agreement entered into as a result of collective bargaining. [7103(a)(6)].	<b>Agreement:</b> means agreement negotiated through collective bargaining pursuant to provisions of Act. [201(f)].	No definition for agreement.
	<b>Grievance:</b> complaint by employee or labor organization concerning personnel policies and practices and matters affecting working conditions; complaint concerning effect, interpretation, or claim of breach of agreement; or complaint by agency concerning interpretation and application of agreement, but does not involve complaint involving matters subject to appeals procedures prescribed by, or pursuant to, existing or future specific provisions of law. [7103(a)(7)]	<b>Grievance:</b> any complaint by employee or labor organization concerning any aspect of employment relationship with agency including any matters formerly subject to final administrative review outside agency under regulations of CSC, or law, complaints related to agreements, and any claimed violation, misinterpretation, or misapplication of any law, rule, or regulations governing conditions of employment. [201(b)]	<b>Grievance:</b> any complaint by an employee or by a labor organization concerning any aspect of the employment relationship with an agency as well as any complaint concerning the effect, interpretation, or claim of breach of a collective bargaining agreement, and any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation governing conditions of employment. [3(q)]
	<b>Confidential employee:</b> an employee who acts in a confidential capacity to person who formulates or effectuates mgt. policies in labor relations. [7103(a)(12)]	No provision.	No provision.

<p><i>Professional employee:</i> (not defined in Order but same definition by Asst. Secretary in case determination): employee engaged in performance of work requiring knowledge of advanced type in field of science or learning customarily acquired in specialized intellectual instruction and study in institution of higher learning . . . requiring consistent exercise of discretion and judgment in its performance . . . predominantly intellectual and varied in character . . . or such study and is performing related work under direction of professional person to qualify himself to become professional employee. [7103(a)(13)]</p>	<p>No provision.</p> <p>Professional: includes any employee whose work—(1) is predominantly intellectual and varied in character; (2) requires the consistent exercise of independent judgment; (3) requires knowledge of an advanced nature in a field of learning customarily acquired by specialized study in an institution of higher education or its equivalent; and (4) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time. [3(g)]</p> <p>Dispute: includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of employees in the negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. [201(g)]</p> <p>Similar to HR 13. [3(n)]</p> <p>Similar to HR 13. [3(p)]</p> <p>Freightier: includes any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. [3(i)]</p>
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Executive Order 11491, amended by E.O. 11616	H.R. 10700 (Henderson)	H.R. 13 (Brasco)/S. 351 (McGee)	H.R. 9784 (Ford)
	<p><i>Collective Bargaining:</i> Bargaining in good faith between authorized representatives of a labor organization having exclusive recognition and management officials having management responsibility for the appropriate unit:</p>	<p><i>Educational employee:</i> includes any employee of a school system, college or university who—(1) has regular contact with students; (2) participates in the development, implementation, or evaluation of an educational program; or (3) is otherwise involved in the teaching-learning process. [3(f)]</p> <p><i>Service:</i> means the Federal Mediation and Conciliation Service established by chapter 29 or title 172, U.S. Code. [3(f)]</p> <p><i>Collective bargaining.</i> Definition describes mutual obligation of representatives of parties to bargain in good faith in effort to reach agreement. Duty to negotiate extends to matters which are or may be subject of a statute or regulation and if legislative action necessary to implement agreement shall include the obligation of agency to submit such to appropriate governmental body for action. Agency not to make or apply rules or regulations restricting scope of bargaining or which conflict with any negotiated agreement. [3(m)]</p> <p><i>Determination of agent:</i> in determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. [3(f)]</p>	

*Exclusive Representative*—includes any employee organization which has been (1) selected or designated pursuant to the provisions of section 6 of the Act as the representative of the employees in an appropriate collective bargaining unit; or (2) recognized by an agency prior to the effective date of this Act as the exclusive representative of the employees in an appropriate collective bargaining unit. [3(e)]

# APPLICATION

Applies to employees and agencies in executive branch . . . except for FBI, CIA, or agency components having intelligence, investigative, or security functions, including the investigation of employee integrity in performance of duties, when agency head determines order cannot be applied consistent with national security requirements or internal security of the agency. No appeal. Exceptions do not apply to section 22. [3(b)(1), (2), (3), (4)]

Agency head may suspend any provision, except non-veteran adverse action appeal right (Section 22), in installations outside U.S. No appeal. [3(c)]

Employees involved in administering a labor relations law or the order may not be represented by organizations representing other employees subject to such law or order. [3(d)]

Similar to application under Order (see definitions above for agency and employee): President can make exemptions based on national security; exemptions by agency head, with approval of Authority, based on internal security. [7103(a)(2)(3)]

Exemptions by agency head limited as noted above. Non-veteran adverse action appeal right remains in effect under continuity clause. [7103(a)(2)(3)]

Such limitation applies only to employees administering this Act. [7106(b)(2)]

Coverage greatly enlarged to apply to all Federal Departments and agencies, excluding only the Postal Service. It would apply to the FBI, CIA, and other agencies having as primary function intelligence, investigative or security work, or agencies concerned with internal security duties. No exception by agency head based upon national or internal security. [201(b)(c)]

Exceptions by agency head not provided. [201(b)(c)]. No provision on non-veteran adverse action appeal rights.

No such limitation on representation for employees administering Act. [201(b); 501(d)]

Coverage similar to HR 13. [3(b)(c)]

No provision.

No provision.

## ADMINISTRATION

Executive Order 11491, amended by E.O. 11616	H.R. 10700 (Henderson)	H.R. 13 (Brasco)/S. 351 (McGee)	H.R. 9784 (Ford)
<p><i>Federal Labor Relations Council (FLRC)</i>: consisting of CSC Chairman, who is Chairman of FLRC, Secretary of Labor, Director of the Office of Mgt. and Budget, and other officials President may designate.</p> <p>--to administer order, decide major policy issues, prescribe regulations, report to President; and</p> <p>--to consider appeals from decisions of Asst. Secretary of Labor, certain negotiability issues, exceptions to arbitration awards, other appropriate matters.</p> <p>CSC to provide administrative support and services to Council. (4)</p>	<p>Establishes the Federal Labor Relations Authority to carry out functions of Act except as otherwise provided, including activities of FLRC, FSIP, and Asst. Secretary under Order. Arbitrability and grievability issues to be determined under negotiated grievance procedures. Authority can certify exclusive representative without election under section 7106(f). Authority composed of Chairman and two additional members; full time; appointed by President and confirmed by Senate.</p> <p>Annual report to President for transmittal to Congress. Can delegate functions to Executive Director or other employees, whose decision or action is subject to review by Authority within 60 days. To prescribe rules and regulations to carry out its responsibilities, and appoint necessary staff. (7104; 7105; 7117(a)(1))</p>	<p>Creates Federal Labor Relations Authority. Authority to carry out such functions as performed under Order by FLRC, FSIP, and A/SLMR, with enlarged authority and scope, including certification of representative without election. (501 (b)(g)) However, arbitrability and grievability questions subject to negotiated grievance procedure. (201 (b); 1101(e)) Composed of a Chairman and two additional members, full-time, appointed by President with advice and consent of Senate, from a list of ten persons submitted to President by the American Arbitration Association; to report in writing to Congress and to President at close of fiscal year concerning cases, decisions and moneys disbursed. Can delegate functions to Executive Director and certain other employees whose determinations stand unless Authority undertakes to grant review within 30 days after request for review filed. Executive Director has final authority concerning alleged ULP violations. To prescribe rules and regulations and appoint necessary staff. Certain restrictions on employment of attorneys, and on review of trial examiner's report. (301, 401)</p>	<p>Creates Federal Employees Relations Board, consisting of five full-time members, appointed by President with consent of Senate. Board to issue rules and regulations necessary to carry out provisions of Act; has subpoena power; decides unit and representation issues (5(b)(c)(d)); conducts elections where appropriate; rules on showing of interest and recognition without election (5(b)); determines alleged ULP's including directing back pay and disciplinary actions as necessary, with cease and desist powers relative to violations of Act; and fines and/or imprisonment for interference with Board. Establishes position of General Counsel of Board; appointed by President with consent of Senate; to investigate alleged violations of Act; file and prosecute complaints; intervene before Board in unlawful act proceedings brought under section 11; and to have other powers as Board may prescribe. (4, 6, 10, 11)</p>
<p><i>Federal Service Impasse Panel</i>: consisting of at least 3 members appointed by President. Panel had independent authority but is or</p>	<p>Activities of Panel under Order assigned to Federal Labor Relations Authority as discussed above. (also see impasse procedures, below, 7111.)</p>	<p>No provision. Activities performed by Panel under Order assigned to Authority as reflected above.</p>	<p>No provision. Special impasse procedures established under section 7.</p>



organizationally located within Council for services and staff assistance. Authorized to take action necessary to settle impasses on substantive issues in negotiations. (5) Parties may agree on techniques to assist in resolving impasses (11a), but arbitration or third-party factfinding with recommendations may not be used except when expressly authorized by panel. (17)

*Assistant Secretary of Labor for Labor-Management Relations:*

- decides unit and representation issues.
- supervises elections and certifies results.
- decides disputes on eligibility for national consultation rights.
- decides unfair labor practice complaints and standards of conduct cases.
- decides grievability and arbitrability questions under an agreement.
- may require an agency or labor organization to cease and desist from violation of Order and require affirmative action.
- may request and use the services and assistance of employees of other agencies.
- shall prescribe regulations to administer his functions under Order.
- costs not reimbursed.
- a member of the Civil Service Commission to perform duties of Assistant Secretary when such matters involve the Department of Labor.

(6)

No provision. Activities of A/SLMR under Order assigned to Federal Labor Relations Authority as noted above.

No provision. Most activities performed by A/SLMR under Order assigned to Authority.

No provision. Most duties of A/SLMR under Order assumed by Board or Board empowered to issue appropriate regulations effectuating the Act. (4)

RECOGNITION

Executive Order 11491, amended by E.O. 11616	H.R. 10700 (Henderson)	H.R. 13 (Brasco)/S. 351 (McGee)	H.R. 9784 (Ford)
Recognition to be accorded to qualified organizations.	Similar. [7106(a)(n)]	Similar. [501(a)]	Exclusive representation and recognition to be accorded organization designated or selected by majority of employees in appropriate unit. [6(a)]
New determination of right to exclusive recognition not required in unit or subdivision thereof within 12 months after prior valid election with respect to unit. [7(c)]	Same. [7106(c)(2)]	Similar. [501(f)]	Similar, except majority determination and representation can be determined without election. [6(b)(3)(4); 6(d)(iii)]
Recognition of labor organization does not preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appeal rights established by law or regulations and from choosing his own representative except when presenting a grievance under a negotiated grievance procedure as provided in section 13. [7(d)(1)]	Language of Act differs from Order but it appears that intent is to parallel rights under the Order.	Negotiated grievance procedure is procedure for all grievances and complaints. Exclusive representative to represent all employees, but employee can present own grievance, provided that organization has opportunity to be present and to present its views. [502(1); 1101(b)(c)]	Similar exclusive representation rights, but scope of bargaining virtually unlimited. [6(a); 5(b)]
Recognition does not preclude or prevent consultation and dealings with religious, social, fraternal, professional organizations, or other lawful organizations not qualified as labor organizations (with certain restrictions). [7(d)(2)(3)]	Similar. [7106(1)(2)(3)]	Similar. [502(2)(3)]	No provision.
Separate system for communication and consultation with associations of supervisors required. [7(e)]	Continues under continuity clause until otherwise specifically superseded by order of President or regulations issued pursuant to Act. [7117(a)(2)]	No provision.	No provision.

*National consultation rights* accorded based upon criteria established by Council. Right to comment on proposed substantive changes in personnel policies, to suggest changes in personnel policies, to confer in person on such policies, and present views in writing. NCR not accorded for unit covered by national exclusive recognition. Organization may appeal to Assistant Secretary of Labor agency decision not to grant national consultation rights (9)

National Consultation Rights granted per criteria issued by Authority: when labor organization has exclusive recognition below agency level for substantial number of employees of the agency. Not applicable when there is exclusive recognition at agency level. Issues over recognition reviewed by Authority. Right to be informed on proposed changes in agency personnel policies and practices and matters affecting working conditions and shall have sufficient time to present its views and to initiate proposals. Proposals shall receive consideration by agency before final action is taken, and agency shall provide written statement of reasons for its actions. Scope of consultation same as that for exclusive recognition. [7106(m)]

Exclusive recognition determined by secret ballot election; or Authority may certify without election if it determines that unfair labor practices by agency prevent free election; or Authority may certify upon its determination that organization represents majority of unit and no other petitions or questions exist over appropriateness of unit. Authority supervises elections, certifies, and hears issues at dispute. Waiving of hearings not prohibited by stipulation for consent election per regulations and rules or decisions of Authority (presently provided in Asst. Secretary's regulations). [7106(a)(e) (f) (k)]

National Consultation Rights may be granted organization that has exclusive recognition at local level, per criteria issued by Authority. Consultation to permit sufficient time for organization to initiate proposals, present agreement or objection to agency proposals and its reasons. Agency to consider views of organization before action and provide written rationale for its actions. Does not apply when there is national exclusive recognition. (504)

No provision. Exclusive recognition is only form of recognition and national exclusive recognition of agency to supersede all recognitions within unit. [6(h)]

Exclusive recognition obtained either through showing of credible evidence that majority of employees desire representation or through secret ballot election in which majority of ballots cast favor petitioning organization. [6(b)(c)(d)(e)(f)]

Exclusive recognition similar to HR 10700, except in any election where none of choices on ballot receives majority, but majority of all votes cast for representation, runoff election shall be conducted between two organizations with largest number of votes. National exclusive recognition to supersede all other recognitions. Determinations by Authority not subject to judicial review. [501]

Executive Order 11491, amended by E.O. 11616	H.R. 10700 (Henderson)	H.R. 13 (Brasco)/S. 351 (McGee)	H.R. 9784 (Ford)
<p>Appropriate unit may be established on a plant or installation, craft, function, or other basis which will ensure a clear and identifiable community of interest among the employees and will promote effective dealings and efficiency of agency operations. Also unit shall not include mgt. officials or supervisors (except as provided in section 24), or guards together with other employees, nonclerical, Federal personnel workers, or professionals with nonprofessionals unless professionals vote for inclusion. [10(b)]</p> <p>Unit criteria are similar. Plus specifies that unit may be on agency basis. With approval of Authority, organization and agency may agree to combine two or more units. Adds criterion that unit be consistent with the centralization or decentralization of authority for personnel policy matters within agency. Exclusions include nonclerical "personnel workers", confidential employees, and employees engaged in administering Act together with other employees. [7106(g)(b)(i)]</p>	<p>Similar to HR 10700, except sole unit criterion is community of interest; no reference to confidential employees; supervisors not excluded; narrow definition for managerial officials who are to be excluded; and guards are not treated separately. (501)</p> <p>No provision covering guards.</p>	<p>Appropriate unit may be established on agency, plant, or installation, functional or other basis insuring a clear and identifiable community of interest among employees and will promote effective dealings and efficiency of agency operations as well as insuring employees fullest freedom in exercising rights under Act. Excludes units including managerial employees, both professional and nonprofessional without self determination, and employees engaged in Federal personnel work in other than purely clerical capacity. Permits combining supervisory and nonsupervisory firefighter, educational employees and public safety officers. [6(f)]</p> <p>No provision on guards. Reference to public safety officers as noted above.</p>	<p>Exclusive representative to represent in collective bargaining "all employees in such unit for such purpose." Employees may individually or as group present complaints informally to agency, provided exclusive given opportunity to be present at adjustment and to make its views known. Employee cannot be represented by any other labor organization. Right to dues withholding and agency or union shop. Right to be present at discussions between agency and employees or employee representatives</p>
<p>Established right of organization to act for and negotiate agreements covering all employees in unit, obligation to represent interests of all employees without discrimination or regard to membership, opportunity to be represented at formal discussions between mgt. and employees or employee representatives concerning grievances, personnel policies and practices, other matters affecting working conditions in unit. [10(e)]</p>	<p>Differs as follows: Organization "entitled to represent and bargain collectively for employees in the unit." Thus, organization not obligated to represent interests of all employees who have a grievance. Employees can represent self under negotiated grievance procedure but organization has right to be present when grievance adjusted.</p>	<p>Exclusive representation rights similar to Order, except scope of representation extends virtually to all matters related to employment. [502; 503(a)]</p>	

concerning grievances, potential grievances, personnel policies and practices, or other matters affecting working conditions of employees in unit; and employer to grant access solely to representatives of exclusive representative. In addition, exclusive to have access at reasonable times to employee work areas, right to use employer's bulletin boards, mailboxes, and other communication media, subject to reasonable regulation, and right to use employer's facilities at reasonable times for purpose of meetings concerned with exercise of rights under Act, and provided challenging organization denied use and access until timely and lawful challenge. [5(b)(c); 6(a)]

#### AGREEMENTS

Agency and organization representatives shall meet and negotiate in good faith on personnel policies and practices and matters affecting working conditions, subject to applicable laws and regulations, including policies set forth in the Federal Personnel Manual, published agency policies and regulations, a national or other controlling agreement at a higher level in the agency, and the Order. In the negotiation which can result in the execution of a written agreement, parties may determine appropriate techniques to assist them (consistent with section 17 of Order). [11(a)]

Similar rights and duties of labor organizations and agencies, to deal in good faith, with some changes in procedures and scope of dealings as outlined: Representatives to meet and negotiate in "good faith" for purpose of arriving at an agreement, with description of good faith bargaining. [7107(a)(b)] Negotiation to encompass personnel policies and practices and matters affecting working conditions. [7107(c)] Most matters and areas presently in sections 11(b) and 12(b) or E.O. 11491 are combined and reserved to management. Exclusions do not include technology of performing work and related impact, and maintenance of efficiency of Government operations. [7107(h)] Negotiations are also limited by laws, policies and regulations, and controlling agreements. [7107(d)]

Similar obligation to bargain in good faith, except scope of bargaining virtually unlimited, not to be restricted by agency regulations. (503, 901)

Similar rights and responsibilities of organization and agency to bargain in good faith, except bargaining under Act extends to virtually all conditions of employment. See definition of "collective bargaining." [3(m)(p)]

Executive Order 11491, amended by E.O. 11616	H. R. 10700 (Henderson)	H. R. 13 (Brasco)/S. 351 (McGee)	H. R. 9784 (Ford)
<p>Obligation to consult or negotiate does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. May negotiate appropriate arrangements for employees adversely affected by impact of realignment of work forces or technological change. [11(b)]</p>	<p>Most matters within section 11(b) of Order are herein combined with areas presently reserved to management in section 12(b) of Order. See note above. [7107(h)]</p>	<p>No reserved rights of management. Scope of bargaining virtually unlimited as noted above. [201(i); 503; 504; 901; 1704(a)]</p>	<p>No provision. See definition of collective bargaining. [3(m)(p)]</p>
<p>Issues as to whether a proposal is not negotiable because contrary to law, regulation, controlling agreement, or the Order are to be resolved in a specified manner—by agreement procedures, by agency head or by Council, depending upon circumstances. [11(e)]</p>	<p>Similar provisions for resolution of negotiability issues. Function of Council assumed by Authority. [7107 (c)]</p>	<p>No similar provision on negotiability issues. See above.</p>	<p>No provision. See above.</p>
<p>Application of agreement provisions is subject to existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; published agency policies and regulations in existence at the time the agreement was approved; and subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agree-</p>	<p>Similar provisions. [7107(d)]</p>	<p>No provision. Bargaining not to be limited by agency regulations. [503(c); 1704(a)]</p>	<p>No provision. Bargaining not limited by agency regulations or law. [3(m)(p)]</p>

ment at a higher agency level. [12(a)]	Same areas reserved to management except no reference to efficiency of operations. As noted above, are combined with existing optional matters under section 11(b) of Order. [7107(b)]	No provision.	No provision.
Agency management retains right to direct employees; to hire, promote, assign, retain, discipline or lay off; to maintain efficiency; to determine methods, means and personnel for doing the work; to take necessary action in emergency. [12(b)]	Employees have same freedom of choice. [7108(c)].	Employee either becomes member and pays dues, or pays representation fee—amounts to union shop or agency shop upon request of organization. [701(2)].	Employee either becomes member and pays dues, or pays representation fee—agency shop. [5(c)].
Agreement shall not require an employee to become or remain a union member, or to pay money to a union except as he voluntarily authorizes for payment of dues through payroll deductions. [12(c)].	Establishes new and special bargaining arrangements as follows: <i>Issuance of policy or regulations</i> concerning negotiable matters are subject to: (1) if to be issued by Civil Service Commission or any other agency (except Department of Defense) and relates to more than one agency, copy goes to Federal Labor Relations Board for consideration under section 7107(b); (2) if to be issued by head of agency or management official, relates to employees of the agency, and labor organization holds exclusive recognition at the agency level, proposal subject to negotiation with such organization; (3) if to be issued by head of agency, proposal subject to negotiation upon request from labor organizations holding national consultation rights under section 7106(m) if such organizations hold recognition among majority of employees affected by the proposal; (4) if to be issued by mgt.		

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amended by E.O. 11616

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official, other than head of agency, and exclusive recognition not held by organization at level of the mgt. official, proposal shall be transmitted to labor organizations holding exclusive recognition at subordinate levels of agency, and upon request by organizations which represent majority of employees affected, proposal subject to negotiation. Issues on representation of majority of employees affected under (e)(3) or (4) determined by Authority. Organization representatives participating within (e)(3) or (4) are not entitled to travel costs or per diem. [7107(e)(f)]

*Federal Labor Relations Board* established to consider policies and regulations involving negotiable matters under section 7107(e)(1) to be issued by Civil Service Commission or any other agency (other than Department of Defense). Members designated by Chairman of Civil Service Commission consisting of a Chairman, five mgt. officials, and five labor organization representatives, under special criteria. Board to meet and consider proposals not earlier than 21 days, nor later than 30 days, after date on which proposal is transmitted. Determination on proposal by majority vote. Chairman votes only to break ties. When pro-



posals required by law to be issued within specified time, the policy or regulation to be issued within the time required by law although Board may not have reached agreement on proposal. If four members of Board propose change or addition to policy or regulation of Civil Service Commission or any other agency (other than Dept. of Defense) relating to employees of more than one agency it will be considered by Board. Management Board members serve without additional pay, and members representing organizations not entitled to pay from Government. Civil Service Commission to provide clerical and professional personnel services to Board. [7107(g)]

Negotiated grievance procedures required in agreements, and to cover arbitrability questions. Procedure not limited to matters covered by agreement, to be exclusive grievance procedure available to unit employees, but grievance procedure not to supersede appeals procedures established by law. Employee can present own grievance, but exclusive representative has right to be present at adjustment if it is not the representative of employee. [7112; 7106(f)(1); 7107(d)(1)]

Grievance procedures are required in negotiated agreements. Procedure to be applicable only to unit employees for consideration of grievances over interpretation or application of the agreement, and it may not cover other matters for which statutory appeals procedures exist, and shall be the exclusive procedure available to the parties and the employees in the unit for resolving such grievances. Employees may present their own grievances without the intervention of the exclusive representative so long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given an opportunity to be present at the adjustment. [13(a)]

All agreements to have grievance procedure: sole procedure for unit employees concerning all grievances over agreement or otherwise related to employment; employee can present own grievance if organization has opportunity to be present and present its views. Binding arbitration required, may be invoked by organization, including questions of arbitrability. [101(h); 502(1); 1101]

Grievance procedures required in agreements for binding arbitration of grievances, including questions of arbitrability; exclusive procedure available to unit employees. Party to agreement aggrieved by second party's failure or refusal to proceed with arbitration under agreement can ask court for summary action directing that arbitration proceed. Arbitrator's decision may be enforced by appropriate court. Other conditions and rights of organization and employee similar to HR 13 as noted above under exclusive recognition. [8; 5(b); 6(a)]

Executive Order 11491, amended by E.O. 11616	H.R. 10700 (Henderson)	H.R. 13 (Brasco)/S. 351 (McGee)	H.R. 9784 (Ford)
<p><i>Arbitration is permitted and is limited to the same matters as is the grievance procedure. Arbitration may be invoked by the agency or an exclusive representative. Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council. [13(b)]</i></p>	<p>Procedure must include a process for binding arbitration, to be invoked by organization or agency. Arbitrators to be selected from Federal Mediation and Conciliation Service list. Either party may file exception with Authority to arbitrator's award. Agency must implement decision by arbitrator to make an employee whole, including back pay. (7112)</p>	<p>Binding arbitration required in grievance procedure. Similar to HR 10700 provision except invoked only by organization, and arbitrator's award appealable to courts. (1101)</p>	<p>Binding arbitration required in grievance procedure, similar to HR 13. (8)</p>
<p>Grievances may be initiated by unit employees on matters other than the interpretation or application of the agreement under any procedure available for that purpose. [13(c)]</p>	<p>Negotiated procedure is sole grievance procedure to be used by unit employees for settlement of grievance defined in Act—see above definition. [7103(a)(7); 7112(a)]</p>	<p>No provision. Negotiated procedure is only procedure available to unit employees. [1101(c)]</p>	<p>Similar to HR 13. [8(a)]</p>
<p><i>Grievability and Arbitrability issues.</i> Disputes over what is subject to the grievance procedure or arbitration may be referred to the Asst. Secretary of Labor. [13(d)]</p>	<p>Grievability and arbitrability issues processed under negotiated procedures. [7112(a)]</p>	<p>Similar to HR 10700. [1101(c)(e)]-----</p>	<p>Grievability and arbitrability issues processed under negotiated grievance procedure and arbitration. [8(a)]</p>
<p>Provisions are not applicable to agreements made before effective date of the Order as amended. [13(e)]</p>	<p>Arrangements in existing agreements protected under savings clause. [7117(b)(1)]</p>	<p>Arrangements in existing agreements protected under savings clause. (1702)</p>	<p>Arrangements in existing agreements protected under savings clause. [12(a)]</p>
<p>Agreements are subject to approval by agency head or his designees. Agreement must be approved if it conforms with law, published agency policies and regulations (unless agency has granted exception), and regulations of other appropriate authorities. Local agreements subject to controlling agreement at higher level is approved under procedures of controlling agreement. (15)</p>	<p>Similar due to continuity clause. Provisions to continue until specifically superseded by order of President or regulations issued pursuant to Act. [7117(a)(2)]</p>	<p>No provision. Existing arrangements subject to negotiation. (1702)</p>	<p>No provision. Provision in existing agreements protected under savings clause. [12(a)]</p>

NEGOTIATION DISPUTES AND IMPASSES

<p>Federal Mediation and Conciliation Service to assist parties in resolving negotiation disputes, subject to its rules. (16)</p>	<p>Same FMCS services and assistance. [7111(a); 7117(a)(1)]</p>	<p>Similar provision. [901(a)]</p>	<p>Similar FMCS services and assistance. [7(a)]</p>
<p>If voluntary arrangements, including services of FMCS or other third-party mediation fail to resolve negotiation impasse either party may request the Federal Service Impasses Panel to consider the matter. Panel may, in its discretion and under its rules, consider the impasse; may recommend procedures to the parties for resolution of impasse, or settle the impasse itself. Arbitration or third-party factfinding with recommendations may be used by parties only when authorized or directed by the Panel. (17)</p>	<p>Similar, except either party may request Authority to consider. Authority to establish impartial three member panel to consider impasse. Three panelists to be "familiar with Federal Government operations and knowledgeable in labor-management relations". Action of panel on impasse is final and not subject to further review. (7111)</p>	<p>Provides for voluntary arrangements including FMCS services. Either party can subsequently request assistance of Authority, but parties may agree to binding arbitration of impasse. Authority to determine appropriate methods and procedures and may determine binding settlement. (901)</p>	<p>If mediation procedures agreed to by parties and FMCS assistance does not resolve impasse, impasse referred to factfinding with advisory recommendations (binding if agreed to by labor organization). If binding, organization prohibited from striking to resolve impasse. (If organization selects advisory factfinding, it may strike under provisions of section 9.) (7)</p>
<p>Strikes. Provides right to strike for the exclusive representative and for employees to participate in strikes arising out of or in connection with labor dispute. Restrictions: Restraining orders or injunctions may be granted on the basis of findings of fact made by the appropriate district court after due notice and hearing that the strike poses a clear and present danger to the public health or safety and it is in the best public interest to prevent. If the exclusive elects binding factfinding during negotiation disputes they will be prohibited from striking for the purpose of resolving the dispute. Courts may grant restraining orders and injunctions where strikes are conducted in violation of a negotiated agreement provision. [9(a)(b)(c); 7(c)(1)]</p>			

## CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

Executive Order 11491, amended by E.O. 11016	H.R. 10700 (Henderson)	H.R. 13 (Brasco)/S. 351 (McGee)	H.R. 9784 (Ford)
<p><i>Standards of Conduct for Labor Organizations</i> require recognized organizations to subscribe and adhere to internal democratic practices, exclude from office persons affiliated with Communist, totalitarian or corrupt influences, prohibit officers and agents from having business or financial conflicts of interest, maintain fiscal integrity, file financial and other reports, provide for bonding of organization officials and employees, meet trusteeship and election standards. Asst. Secretary of Labor prescribes regulations, decides alleged violations. (18)</p>	<p>Similar, except organizations subject to reporting and disclosure requirements applicable in private sector under direction and regulations of Secretary of Labor. (7115)</p>	<p>Requires that organizations only adopt governing requirements providing for democratic practices, freedom from financial and business conflicts of interest, and fiscal integrity. No reporting or disclosure requirements, or procedures for deciding alleged violations. (1401)</p>	<p>No provision on standards of conduct for labor organization as in Order. See UPL's below concerning unlawful acts.</p>
<p><i>Unfair labor practices.</i> Agency management shall not interfere with, restrain, or coerce an employee in the exercise of rights; encourage or discourage membership in labor organization; sponsor, control, or otherwise assist a labor organization (except for customary and routine services and facilities under certain conditions); discipline or otherwise discriminate against an employee because he files a complaint or gives testimony under Order; refuse to accord appropriate recognition to a labor organization qualified for such recognition; or refuse to consult, confer, or negotiate with a labor organization as required by Order.</p>	<p>Similar. Does not include phrase in section 19 (a)(3) of Order concerning the furnishing of services and facilities whereby such is to be "consistent with the best interests of the agency, its employees, and the organization". And section 19(a)(5) not included: "refuse to accord appropriate recognition to a labor organization qualified for such recognition. Adds to ULP's for agency: (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this subchapter; or (7) to fail or refuse to comply with any provision of this subchapter [7109(a)]. Complaints filed with Authority. (7110)</p>	<p>Management ULP's similar to H.R. 10700, except not ULP for mgmt. to encourage membership, or to require union or agency shop arrangement as condition of employment. Complaint filed with Authority. [701(a)]</p>	<p>Similar to H.R. 13, except not improper to enforce agency shop arrangement as condition of employment, and ULP to either encourage or discourage membership. Alleged violations filed with Board. [10(a)]</p>

[19(a)]. Unresolved complaints filed with Asst. Secretary [19(d)]

Similar prohibited practices for labor organizations, with additions that organizations may not coerce, discipline, fine, or take other economic sanction against a member as punishment for or to hinder his work performance or productivity; may not condone strike or prohibited picketing activity by failing to take affirmative action to prevent or stop it; may not discriminate in membership because of race, color, creed, sex, age, or national origin; and may not refuse to consult, confer, or negotiate with an agency as required by Order. [19(b)] Organizations to have reasonable and uniform membership standards, and may enforce appropriate discipline of membership. [19(c)] Unresolved complaints filed with Asst. Secretary. [19(d)]

Only issues in an unfair labor practice which can be raised in appeals procedure may not be raised as an unfair labor practice. Issues which can be raised under a grievance procedure may be processed through either grievance or unfair labor practice, but not through both procedures. Appeals or grievance decisions are not considered unfair labor practice decisions and are not precedent for unfair labor practice decisions. Unresolved complaints filed with Asst. Secretary. [19(d)]

Similar. Same additional ULP's as for agency as noted above. [7109(b)(c)] Complaints filed with Authority. (7110)

Similar. Unresolved complaints filed with Authority under procedures of section 7110, discussed below. [7109(d)]

No provision.

Executive Order 11491, amended by E.O. 11616	H.R. 10700 (Henderson)	H.R. 13 (Brasco)/S. 351 (McGee)	H.R. 9784 (Ford)
<p><i>Authority empowered to prevent ULP's.</i> Its power not to be affected by any other means of adjustment or prevention that has been or may be established by agreement, existing or future laws, by procedures authorized to be issued by existing or future laws, or otherwise. Procedures outlined on complaint, hearing, and testimony. Authority can order cease and desist from ULP or take other affirmative action including reinstatement of employee (backpay may be required of agency or labor organization), and require periodic reports. Exceptions to proposed report by Authority may be filed and Authority to grant review if it believes exception raises substantial issue of fact or law. (7110)</p>			
<p>Similar to HR 10700 except Authority may order agency to discipline supervisor or official of agency upon determination of arbitrary, capricious, or otherwise knowing violation of Act. (501)</p>			
<p><i>Prevention of unlawful acts.</i> Similar to HR 10700. Board empowered to prevent any person from engaging in unlawful acts under section 10. Board may direct back pay, disciplinary action against management representatives, and may petition courts to seek enforcement of its orders. Judicial review of Board decisions authorized. Provides detailed procedures on prevention of ULP's. (11)</p>			

Establishes independent category of ULP's for any person. [701(c)]

#### MISCELLANEOUS PROVISIONS

<i>Use of official time.</i> Solicitation of union membership, dues, and internal union business must be during non-duty hours. Negotiations by an employee representing a labor organization shall not be on official time unless the parties agree to other arrangements which may provide for official time for em-	Internal business of labor organization during nonduty hours of employees concerned. However, negotiations by employees representing organization, including attendance at impasse settlement proceedings, to be on official time for such during regular working hours. Employees on such authorized official time shall	Mandates full official time for employees called by either party to participate in any phase of proceedings, or representing organization in negotiations, grievance or impasse procedures, without limit on number of employees. (1201)	Similar to H.R. 13:
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<p>employees for up to 40 hours or one-half the time spent in negotiations during regular working time. Number of employees authorized of- ficial time "normally shall not ex- ceed number of management repre- sentatives." (20)</p>	<p>not exceed the number of persons representing agency. Additionally, Authority to determine if employees participating for, or on behalf of, organization in any phase of pro- ceedings before Authority to receive official time for such purposes dur- ing regular working hours. (7113)</p>	<p>Similar, except allotments at no cost to organization or employee, with exceptions assignment irrevocable for one year. (7108)</p>	<p>Requires agencies to withhold dues and initiation fees at no charge. Assign- ments irrevocable for one year or until expiration of agreement, which- ever occurs later. (601)</p>	<p>Similar to H.R. 13, no reference to cost. Requires agencies to withhold from nonmembers, as a condition of con- tinued employment, amount equal to dues, fees, and assessments that a member is charged: Authorization not revocable for one year. [5(b)(2), (c)]</p>
<p><i>Allotment of dues.</i> Authorizes volun- tary dues allotments by organiza- tion's members in unit of exclusive recognition pursuant to negotiated agreement. Allotments subject to CSC regulations. Employee can revoke authorization at stated six- month intervals [21(a)]</p>	<p>Continues under continuity clause until otherwise specifically superseded by order of President or regulations issued pursuant to Act. [7117(a)(2)]</p>	<p>No provision.</p>	<p>No provision.</p>	<p>No provision.</p>
<p>Authorizes voluntary dues allotments pursuant to agency agreements with associations of mgmt. officials or supervisors, subject to CSC regulations. Agencies not required to recover cost of making dues allotments. [21(b)]</p>	<p>Continues under continuity clause until superseded as noted above.</p>	<p>No provision.</p>	<p>No provision.</p>	<p>No provision.</p>
<p><i>Adverse action appeals.</i> All employees in competitive civil service have same rights in adverse action cases as preference eligibles under section 14, Veterans' Preference Act. Right of appeal to Civil Service Commis- sion. CSC decision binding upon agencies. (22)</p>	<p>Similar. [7117(a)(2)]</p>	<p>No provision.</p>	<p>No provision.</p>	<p>No provision.</p>
<p><i>Agency implementation.</i> Agencies to issue policies and regulations for implementation of Order, after con- sultation with appropriate organiza- tions. (23)</p>				

Executive Order 11491, amended by E.O. 11616	H. R. 10700 (Henderson)	H. R. 13 (Brasco)/S. 351 (McGee)	H. R. 9784 (Ford)
<p><i>Savings clauses.</i> Order does not preclude--(1) renewal or continuation of a lawful agreement between an agency and representative of its employees entered into before the effective date of E.O. 10988 (1/17/62); or (2) renewal, continuation, or initial according of recognition for units of mgmt. officials or supervisors represented by labor organizations which historically or traditionally represent mgmt. officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of Order. (24)</p>	<p>Similar. Savings clause expanded to specifically protect exclusive negotiations and certifications of representation entered into before effective date of Act. [7117(b)] Continues policies, regulation, and procedures established under Executive orders in effect on effective date of Act, until revised or revoked by President, or unless superseded by specific provisions of this Act or regulations issued pursuant to Act. [7117(a)(2)]</p>	<p>Savings clause. Rights and responsibilities under exclusive recognition or national consultation rights granted pursuant to E.O. 10988 and E.O. 11491, as amended, or any agreement thereunder except as may be agreed to by parties thereto, or until modified or superseded by an agreement made pursuant to Act. (1702)</p>	<p>Savings clause continues agreements prior to Act. [12(a)]</p>
<p><i>Guidance, training, review and information.</i> Civil Service Commission, in conjunction with the Office of Management and Budget, shall establish and maintain a program of policy guidance to agencies on labor-mgmt. relations and periodically review implementation of these policies. CSC provides technical advice and information, and training assistance to agencies; reviews operation of program to assist in assuring adherence to its provisions and merit system requirements; and, from time to time, reports to Council on state of the program and recommends improvements. [25(a)]</p>	<p>Continues under continuity provision until superseded by order of President or regulations issued pursuant to Act. [7117(a)(2)]</p>	<p>No provision.</p>	<p>No provision.</p>
<p>Department of Labor and Civil Service Commission to collect and disseminate program information to</p>	<p>Authority to maintain file of its proceedings and publish texts of its decisions and actions of panel under</p>	<p>Similar to H.R. 10700, except Bureau of Labor Statistics to maintain files and data and publish information to</p>	<p>No provision.</p>



<p>agencies, organizations and the public [25(b)]</p> <p>section 7111. Civil Service Commission, for guidance and information of any interested person, to maintain file of copies of all available and applicable agreements and publish full texts of all arbitration decisions involving any such employees or agency. All files maintained relative to such services open to inspection and reproduction subject to section 552 of title 5 USC. (7114)</p>	<p>interested parties—files open to inspection under conditions prescribed by Secretary of Labor. (1301)</p>
<p><i>Effective date.</i> Order effective 1/1/70, (issued 10/29/69). (26)</p>	<p>Effective date of Act not mentioned.</p>
<p>Funding. Authorizes appropriation of sums to carry out functions and purposes of Act. (7116)</p>	<p>Effective date of Act not mentioned.</p> <p>Funding provision similar to H.R. 10700 (1601)</p>
	<p>Specifies that <i>Administrative Procedure Act</i> applicable to rules, regulation or adjudication provided by authority or FMCS in carrying out Act. (1701)</p>
<p>Supersede. Provides for supersedeure of regulations, Executive orders and rules noted above under savings clause. (Amendment to Sec. 5, USC 5).</p>	<p>Provides that Act supersede all previous statutes and Executive orders concerning subject matter under Act. [1704(a)]</p>
<p>Severability. Standard severability clause on any provision of Act. (Amendment to Sec. 6, USC 5)</p>	<p>Standard severability clause on any provision of Act. [12(c)]</p>
	<p>Supersedes laws or parts of laws which are inconsistent with provisions of Act. [12(b)]</p>
	<p>Violations, enforcement, and suits. Maximum fine of \$5,000 and/or imprisonment of one year, of persons interfering with Authority and officials or an arbitrator in performance of duties under Act. (1501)</p>
	<p>Similar to HR 13. [11(m)(7)]</p>

Issues		Major Concerns
1. Philosophy and Policy		
References		
What should be the public policy and philosophy for the labor-management program for the Federal service?	<p>-- E.O. 11491 maintains public policy favorable to collective bargaining for Federal employees within framework of law and higher level regulations. First stated in E.O. 10988 of 1962 and continued through three successive Administrations.</p> <p>-- H.R. 10700 is similar in policy and philosophy to E.O. 11491.</p> <p>-- H.R. 13 and H.R. 9784 provide for collective bargaining as the basic mechanism for determining Federal Service personnel policies and practices.</p> <p>. Supercede laws or portions of laws in conflict with their provisions; agency regulations subordinate to agreements.</p> <p>. Virtually all conditions of employment are negotiable.</p> <p>. Employees required to join union or pay equivalent dues as condition of employment.</p> <p>. Management rights and efficiency of operations not included as policy objectives.</p> <p>. H.R. 9784 legalizes strikes under specified conditions; H.R. 13 has no prohibition against striking by Federal employees.</p>	<p>In constructing any Federal Service labor relations system, the following warrant consideration:</p> <p>-- Protection of the public interest.</p> <p>-- Impact of any legislated program on existing and future laws affecting Federal personnel and agency management.</p> <p>-- Recognition of diversity of missions and other special differences among Departments and agencies.</p> <p>-- Special circumstances and limitations which distinguish Federal personnel administration from private and other public sectors.</p> <p>-- Assurance of uninterrupted continuity of public services.</p> <p>-- Protection of Federal management's essential rights to manage and mission accomplishment.</p> <p>-- Meaningful opportunity for broad range of collective bargaining, within balanced system reflecting employee needs, union interests, and public expectations that Government operations be efficient, effective, and responsive.</p>
How should the program balance concerns for the representation rights of employees, status of unions, responsibilities of managers to manage, efficient accomplishment of agency mission, and responsiveness to the public interest.	<p>Background</p> <p>-- The public policy of the existing program, shaped by experience and the special conditions of the Federal sector, is based upon these principles:</p> <p>. Law and public interest are paramount.</p> <p>. Opportunity for employee participation in personnel policy setting and implementation contributes to employee well-being and efficient administration of the Government.</p> <p>. Such participation is improved through constructive labor-management relationships.</p> <p>. Program should facilitate improved employee performance and efficiency, and the continued development and implementation of modern and progressive work practices.</p> <p>. A clear statement of rights and responsibilities of unions and management is required.</p> <p>. Agreements are subject to laws.</p> <p>. Negotiations are subject to higher-level regulations required to assure that degree of uniformity necessary to protect equity to employees and merit principles.</p>	

2. Definitions		
Issue	References	Major Concerns
<p>What definitions are needed, and how should they be expressed in a labor-management relations (LMR) program for the Federal service?</p> <p><u>Background</u></p> <p>-- Definitions are necessary to:</p> <ul style="list-style-type: none"> <li>• resolve potential ambiguities</li> <li>• set parameters of various terms used in the program</li> </ul> <p>-- Definitions exist under E.O. program with history of workability, with Assistant Secretary of Labor for Labor-Management Relations (A/SLMR) and Federal Labor Relations Council resolving disputes as to meaning of terms.</p>	<p>-- E.O. 11491 provides numerous terms commonly used in the LMR program. A/SLMR has fashioned definitions for Management Official, Confidential Employee, and Professional Employee, and they are now undergoing test.</p> <p>-- H.R. 10700 provides definitions similar to E.O. 11491 except</p> <ul style="list-style-type: none"> <li>• "labor organization"</li> <li>• "grievance"</li> </ul> <p>-- H.R. 13 and H.R. 9784 definitions fit the greatly expanded coverage and scope of bargaining. Major differences from E.O. appear in definitions for:</p> <ul style="list-style-type: none"> <li>• agency</li> <li>• employee</li> <li>• supervisor</li> <li>• guard</li> <li>• labor organization</li> <li>• grievance</li> <li>• dispute</li> <li>• conditions of employment</li> <li>• collective bargaining</li> </ul>	<p>-- That the definitions clearly reflect the special personnel, organizational, and mission characteristics of the Federal Service.</p> <p>-- That the definitions be consistent with the intended scope and coverage of the Federal labor-management relations program.</p> <p>-- That the definitions are not in conflict with other terms defined in Title 5 U.S. Code, and other laws; and any differences in terms that are intended are clearly specified.</p> <p>-- That coverage is clearly defined, with attention given to relationship to coverage of other personnel laws and regulations.</p> <p>-- That definitions be specific yet flexible enough to accommodate to the wide variety of situations in the Federal Service.</p> <p>-- That terms used to define the scope of bargaining reflect understanding of the bargaining structure in the Federal Service and the locus of delegated decision-making authority.</p>

3. Coverage		Major Concerns
Issue	References	
<p>What employees and employers should be covered?</p> <p>-- Who is affected by or excluded from coverage of LMR law?</p> <p><u>Background</u></p> <p>-- Under E.O. program, coverage has extended only to employees and employers of Executive branch.</p> <p>• Non-appropriated fund employees brought in under E.O. 11491.</p> <p>-- Unions are interested in greatest possible coverage.</p> <p>-- Groups and categories of employees covered by State statutes differ among states.</p> <p>-- Some States follow NLRA and exclude supervisors from coverage.</p> <p>-- Other States cover supervisors, but they must bargain in separate units.</p> <p>-- In number of States professionals afforded self-determination by statute or agency decision.</p>	<p>-- E.O. 11491</p> <ul style="list-style-type: none"> <li>• Covers only employees of Executive branch</li> <li>• Exclusions based on security and investigations considerations, conflict of interest</li> <li>• Foreign Service employees under E.O. 11636</li> </ul> <p>-- H.R. 10700</p> <ul style="list-style-type: none"> <li>• Similar to E.O. 11491</li> </ul> <p>-- H.R. 13 and H.R. 9784 greatly enlarge coverage to include, except for Postal Service:</p> <ul style="list-style-type: none"> <li>• Employees of Executive branch, Legislative and Judicial branches (employees in competitive positions)</li> <li>• Library of Congress</li> <li>• GPO</li> <li>• Federal Reserve System</li> <li>• And, due to definition for supervisor, as in H.R. 13, many supervisors under E.O. 11491 could become bargaining unit employees.</li> </ul>	<p>-- That coverage be compatible with the basic policy objectives of the LMR program.</p> <p>-- Whether Foreign Service personnel should be covered--justification for separate treatment.</p> <p>-- That "supervisors" be treated as meaningful members of the management team.</p> <p>-- Whether, or the extent to which, employees involved in national and internal security and investigative activities should be covered.</p> <p>-- What would be the impact of coverage of employees in the three branches of Government on the separation of powers doctrine?</p> <p>-- Whether employees of the Administrative body responsible for LMR program implementation should be covered or excluded; and whether they should be affiliated with other labor organizations, an independent organization, or none.</p>

4. Administrative Machinery	References	Major Concerns
Issue	References	Major Concerns
<p>What should be the structure and authority of a central body (or bodies) to administer the program? What functional responsibilities will be placed in such authority or authorities?</p> <p>-- Who will have what authority and under what circumstances are considerations vital to success or failure of program?</p> <p>-- How will the authority (ies) relate to existing agencies of government, to the President, to Congress?</p>	<p>-- E.O. 11491 places administrative authority in:</p> <ul style="list-style-type: none"> <li>• Federal Labor Relations Council (FLRC)</li> <li>• Federal Service Impasses Panel (FSIP)</li> <li>• Assistant Secretary of Labor for Labor-Management Relations (A/SLMR)</li> <li>• In addition, Federal Mediation and Conciliation Service (FMCS) provides mediation services.</li> </ul> <p>-- H.R. 10700 establishes central authority and special Federal Labor Relations Board.</p>	<p>-- What would be the authority of the central body? Would it be superior to present central personnel policy-setting agencies? Would it have authority to override Executive Orders of the President?</p> <p>-- To what extent would it be given latitude to make policy determinations presently established through legislative actions of the Congress?</p> <p>-- Credibility with all parties.</p> <p>-- Would it be so structured as to facilitate timely and judicious case decisions?</p> <p>-- Accountability to President and/or Congress.</p>
<p><u>Background</u></p> <p>-- Most labor relations systems in public sector provide central body, as in the case in the private sector with the NLRB.</p> <p>-- The power or authority of the central body varies by jurisdiction.</p>	<ul style="list-style-type: none"> <li>• Central authority assumes roles of FLRC, FSIP, A/SLMR.</li> <li>• The Board, comprising of union and management members, would make determinations on Government-wide personnel policy.</li> </ul> <p>-- H.R. 13 and H.R. 9784 also establish a central body with wide authority.</p>	<ul style="list-style-type: none"> <li>• Relationship to the courts.</li> <li>• Finality of decisions, rulings</li> <li>• Scope of judicial review</li> <li>• Standards for review</li> </ul>
	<ul style="list-style-type: none"> <li>• Authority extends to major policies due to broadened scope of bargaining.</li> <li>• Agency heads and Governmental agencies such as the Civil Service Commission would be subject to decisions of central authority.</li> </ul>	

## 5. Recognition

Issue	References	Major Concern
<p>What should be the method of granting recognition?</p> <p>-- This will determine if employees are to be represented; if so, by whom.</p> <p><u>Background</u></p> <p>-- Under E.O. 10988 and E.O. 11491:</p> <ul style="list-style-type: none"> <li>• Showing of interest requirement.</li> <li>• 60% participation criteria in election under E.O. 10988.</li> <li>• Dissatisfaction led to majority voting criteria as sole method in elections under E.O. 11491.</li> </ul> <p>-- Private and other public sectors:</p> <ul style="list-style-type: none"> <li>• NLRB provides for voluntary recognition, without Board certification, or certification by election, unless unfair labor practices preclude fair election.</li> <li>• Most states have recognition policies similar to NLRB.</li> </ul>	<p>-- E.O. 11491</p> <ul style="list-style-type: none"> <li>• Election is sole method (of majority voting)</li> </ul> <p>-- H.R. 10700, H.R. 13 and H.R. 9784</p> <ul style="list-style-type: none"> <li>• Central body may certify exclusive, if -- Proper showing of interest.</li> <li>• -- Mgt. ULP prevents fair election.</li> <li>• Election if dispute or petition by another union.</li> </ul>	<p>-- That employees have free choice as to representation.</p> <p>-- That method effectuates stable LMR.</p>

# 6. Unit Recognition

Issue	References	Major Concerns
<p>How should the appropriate bargaining unit be determined?</p> <p><u>Background</u></p> <ul style="list-style-type: none"> <li>-- Critical issue as it determines:               <ul style="list-style-type: none"> <li>. What will constitute a proper grouping of employees for purpose of collective bargaining.</li> <li>. How collective bargaining will be conducted.</li> </ul> </li> <li>-- Fragmented unit may narrow the scope of bargaining because mgt. may have limited authority at that level.</li> <li>-- Pre-determined agency-wide or Government-wide units may have broadest scope of bargaining, but               <ul style="list-style-type: none"> <li>. May join together many diverse interests serving to frustrate employees in selection of bargaining agent.</li> <li>. May serve to prevent challenges to unit by other unions.</li> </ul> </li> <li>-- Private sector: NLRB determines</li> <li>-- Many public sectors follow private sector practice, but a few states fix unit or indicate preference for broadest unit. Practices differ widely at local government level.</li> </ul>	<ul style="list-style-type: none"> <li>-- E.O. 11491               <ul style="list-style-type: none"> <li>. Early roots of community of interest as sole unit standard under E.O. 10988 leading to substantial number of units.</li> <li>. E.O. 11491 established criteria of community of interest, promotion of effective dealing and efficiency of agency operations.</li> <li>. Supervisors and other conflict-of-interest employees excluded.</li> </ul> </li> <li>-- H.R. 10700 follows criteria of E.O. 11491, plus:               <ul style="list-style-type: none"> <li>. Criterion that unit be consistent with centralization or decentralization of personnel management authority.</li> <li>. Permits consolidation of units by agreement of parties, subject to review by central authority.</li> </ul> </li> <li>-- H.R. 13               <ul style="list-style-type: none"> <li>. Community of interest is sole criterion.</li> <li>. Guards not treated separately.</li> <li>. Supervisor definition would allow inclusion of lower-level supervisors in unit.</li> </ul> </li> <li>-- H.R. 9784               <ul style="list-style-type: none"> <li>. Basic criteria similar to E.O. 11491.</li> <li>. Supervisors can be in units under special circumstances.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>-- That appropriate unit promote effective dealings and meaningful bargaining, while promoting efficiency of operations.</li> <li>-- That unnecessary existing unit fragmentation be minimized.</li> <li>-- Maximum flexibility to parties and central authority in determining appropriate unit, thus effectively dealing with relationship of agreement and recognition bars.</li> <li>-- Minimize unnecessary adverse impact on established stable relationships.</li> <li>-- Supervisors be treated as important members of mgt. team. And provision for exclusion of other conflict-of-interest employees (e.g., confidential employees, guards, etc.)</li> </ul>

Issue	References	Major Concerns
<p>7. Scope of Negotiations/Bargaining</p> <p>What should be the scope of bargaining?</p> <p><u>Background</u></p> <ul style="list-style-type: none"> <li>-- Conduct of negotiations and scope of bargaining are of fundamental importance as they are connected with outcome of bilateral dealings:             <ul style="list-style-type: none"> <li>• Meaningful dealings, of substance; or perfunctory gestures.</li> </ul> </li> <li>-- Private sector dealings encompass wide range of conditions of employment including pay and fringes, and are conducted by various means ranging from small single-unit bargaining to bargaining at corporate and industry-wide levels.</li> <li>-- Most States have followed NIRA language of "wages, hours and other conditions of employment."</li> <li>-- Some States have been more specific by making bargainable fulfillment of "professional duties," "all matters over which appointing official may exercise discretion," etc.</li> <li>-- E.O. program of Federal service makes bargainable personnel policies, practices and matters affecting working conditions, with major items, such as pay and fringes, set by Congress, subject to:             <ul style="list-style-type: none"> <li>• law, regulations and published policy</li> <li>• areas reserved to agency management</li> <li>• higher-level agreements</li> <li>• other conditions specified in E.O., such as negotiated grievance procedure</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>-- E.O. 11491             <ul style="list-style-type: none"> <li>• Negotiable matters subject to laws, higher-level regulations, FPM policies, management rights provisions.</li> <li>• Multi-unit and agency-level bargaining exists in practice.</li> <li>• While not in Order, exception to agency regulations encouraged when agreed to by parties.</li> <li>• FLAC determines negotiability disputes.</li> </ul> </li> <li>-- H.R. 10700, similar to E.O. 11491, except:             <ul style="list-style-type: none"> <li>• Prescribes FLRA to rule on multi-agency or Government-wide personnel policies.</li> <li>• National consultation rights can lead to negotiations.</li> <li>• Parties can combine units, subject to FLRA review.</li> </ul> </li> <li>-- H.R. 13 and H.R. 9784 provide bargaining similar to private sector:             <ul style="list-style-type: none"> <li>• virtually all aspects of employment</li> <li>• no management rights provided</li> <li>• may make bargainable areas now covered by law, per supersedeure provision</li> <li>• agency regulations not controlling matters set by law, but does not override law. Agency, if it agrees, must seek change in law.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>-- What items will be specifically allowed? Compatibility with merit principles?</li> <li>-- Some items be specifically excluded:             <ul style="list-style-type: none"> <li>• such as necessary management right under E.O.;</li> <li>• ownership of work and right of contracting out.</li> </ul> </li> <li>-- In what areas is uniformity of policy desirable or necessary?</li> <li>-- If intended that wages and other major fringes be negotiable, how would this work? Bargaining:             <ul style="list-style-type: none"> <li>• in each of approximately 3500 units?</li> <li>• on a coalition basis? effect on existing units?</li> <li>• on regional or national basis?</li> <li>• in legislatively-defined units more attuned to major issues, such as pay, fringes?</li> </ul> </li> <li>-- Will management be able to develop and implement personnel programs, including wages and fringes for managers and other employees not covered, or will these be controlled by Congress?</li> <li>-- Negotiability determination. Role of Courts?</li> </ul>



Issue	Reference	Major Concerns
<p>8. Impasse Resolution</p> <p>How would negotiation impasses be resolved?</p> <p><u>Background:</u></p> <p>-- Constructive and peaceful resolution of impasses is paramount to mission accomplishment and LMR in the public interest.</p> <p>-- Wide range of methods exist in private and other public sectors, including joint efforts such as joint fact-finding through third-party intervention, strikes and lockouts (private sector).</p> <p>-- Historically, strikes by public employees have been prohibited by statute or by court decision.</p> <p>-- While public employees do not have right to strike, the power to strike exists; hence, the threat of strike is ever-present during negotiations.</p> <p>-- Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania and Vermont enacted legislation allowing strikes under limited circumstances.</p> <p>-- Strikes by Federal employees are illegal. Emphasis is on bilateral resolution, with third-party intervention (arbitration in Postal Service, and FSIP under E.O. 11491). FSIP offers recommendations for settlement, with imposition of a settlement as a last resort.</p> <p>-- Evidence in other public sectors of authorization of strikes, with limitation, coupled with binding arbitration.</p>	<p>E.O. 11491 program</p> <ul style="list-style-type: none"> <li>• Federal Mediation and Conciliation Service (FMCS) provides mediation service.</li> <li>• FSIP may recommend settlement or decide conditions itself.</li> <li>• Arbitration or factfinding with recommendations only upon decision of FSIP.</li> <li>• Overall emphasis is on voluntary settlement.</li> <li>• Strikes are illegal.</li> </ul> <p>H.R. 10700 similar to E.O., except:</p> <ul style="list-style-type: none"> <li>• Authority, on request of either party, establishes 3-member Panel.</li> <li>• Panel decision binding, not reviewable.</li> <li>• Arbitration when authorized by Panel.</li> <li>• Strikes illegal.</li> </ul> <p>H.R. 13</p> <ul style="list-style-type: none"> <li>• FMCS and other voluntary means.</li> <li>• May agree to binding arbitration of impasse.</li> <li>• May request assistance of central body which may decide settlement.</li> <li>• No reference to strikes.</li> </ul> <p>H.R. 9784</p> <ul style="list-style-type: none"> <li>• FMCS services.</li> <li>• If FMCS assistance fails, to factfinding (advisory or binding at unions' option).</li> <li>• Union can strike if it selects advisory factfinding, subject to public safety and health limitations.</li> </ul>	<p>-- Emphasis on voluntary settlement.</p> <p>-- Availability of FMCS services.</p> <p>-- High degree of objectivity in any third-party intervention.</p> <p>-- Public interest remains paramount.</p> <p>-- That strikes remain improper and illegal.</p> <p>-- Speedy and effective resolution of impasses.</p> <p>-- Impasses panel has option of involvement with authority to implement actions, subject to review by central body.</p> <p>-- Role that courts may play.</p> <p>-- That impact of impasse-resolving decisions on public be given weight.</p> <p>-- That impasses be resolved in the context of the total negotiated package.</p> <p>-- That in the absence of strikes, non-disruptive dispute resolution machinery be available that is satisfactory to the parties, and accountable to public concerns for costs, efficiency of governmental operations, and equity to employees.</p>

Issue	References	Major Concerns
<p>What procedures should be provided for the resolution of grievances?</p> <p><u>Background</u></p> <ul style="list-style-type: none"> <li>-- Important for parties to know what grievance-resolving procedures may or may not be required to be included in agreements.</li> <li>-- Not legislated in private sector, but practice includes:               <ul style="list-style-type: none"> <li>• Binding arbitration on conditions of employment extending beyond scope of agreement.</li> <li>• Decisions of arbitrator appealable to courts under special circumstances.</li> <li>• Union is exclusive representative.</li> </ul> </li> <li>-- Binding grievance arbitration is gaining acceptance in public sector.               <ul style="list-style-type: none"> <li>• Its legality is well-established.</li> <li>• Estimated that over 50% of agreements now include binding arbitration.</li> <li>• Legislated arbitration is recent development with 16 states and several municipalities having it.</li> </ul> </li> </ul>	<p>9. Grievance Procedures</p> <p>-- E.O. 11491:</p> <ul style="list-style-type: none"> <li>• All agreements to contain procedure.</li> <li>• Sole procedure for terms of agreement.</li> <li>• Not to include appeals on matters where statutory procedures available.</li> <li>• Union is exclusive representative, but employee may represent self.</li> <li>• Union has right to be present at adjudgment.</li> <li>• May include binding arbitration.</li> <li>• Exceptions to arbitrator's award to FLRC.</li> <li>• Grievability and arbitrability questions to A/SLMR.</li> </ul> <p>-- H.R. 10700, similar to E.O. 11491, except:</p> <ul style="list-style-type: none"> <li>• May include grievability and arbitrability questions.</li> <li>• Not limited to scope of agreement.</li> <li>• Must include opportunity for binding arbitration.</li> <li>• Arbitrators from FWC5 list.</li> <li>• Arbitrator has authority to make employees whole.</li> <li>• Union not obligated to represent non-members.</li> <li>• No specific reference to role of court.</li> </ul> <p>-- H.R. 13 and H.R. 9784:</p> <ul style="list-style-type: none"> <li>• Unlimited scope.</li> <li>• Mandatory binding arbitration.</li> <li>• Arbitration invoked only by union, in H.R. 13.</li> </ul>	<ul style="list-style-type: none"> <li>-- Should negotiated grievance procedures extend to matters not covered by negotiated agreements.</li> <li>-- Scope of procedure to include matters outside agreement?</li> <li>-- Protection of statutory appeal rights.</li> <li>-- Right of union to exclusive representation in grievances of unit employees.</li> <li>-- Authority of arbitrator to make employees whole.</li> <li>-- Role of courts and central authority.</li> <li>-- Exception to arbitrator's award.</li> <li>-- Resolution of arbitrability and grievability disputes.</li> <li>-- Right of employee to choose his own representative; and to process his own grievance.</li> <li>-- Avoidance of duplication in reviews of grievance on same matter.</li> </ul>

Issue	References	Major Concerns
<p>10. Union Security</p> <p>What union security arrangements should apply?</p> <p><u>Background</u></p> <p>-- Union security is a major objective of unions and serves to stabilize labor-management relations.</p> <p>-- Under NLRA, agreements may require union membership when not prohibited by State law.</p> <p>-- Public sector:</p> <ul style="list-style-type: none"> <li>Hawaii requires checkoff of service fee.</li> <li>15 States permit checkoff per agreement.</li> <li>A number of states have agency or modified agency shop union security arrangements.</li> </ul> <p>-- Federal sector:</p> <ul style="list-style-type: none"> <li>Voluntary checkoff of union dues per agreement with union. Subject to CSC regulation.</li> <li>Union membership or payment of dues or fees to a union may not be made a condition of continued Federal employment.</li> </ul>	<p>--E.O. 11491</p> <ul style="list-style-type: none"> <li>Voluntary checkoff per agreement, subject to CSC regulations, revocation at 6-month intervals; cost negotiable.</li> <li>No required membership or payments of dues or fees to unions.</li> </ul> <p>--H.R. 10700 similar to E.O. 11491 except:</p> <ul style="list-style-type: none"> <li>Allotments at no cost.</li> <li>Revocation of allotment after one year.</li> </ul> <p>--H.R. 13</p> <ul style="list-style-type: none"> <li>Requires payment of union dues and initiation fee at no charge (employees join union or pay equivalent dues).</li> <li>Allotments revocable after one year or at end of agreement, whichever is later.</li> </ul> <p>-- H.R. 9784 - similar to H.R. 13, except:</p> <ul style="list-style-type: none"> <li>No reference to cost.</li> <li>Revocation after one year.</li> <li>Union without recognition could obtain voluntary dues allotments.</li> </ul>	<p>-- Employees free to join or not join union</p> <p>-- Cost of dues withholding negotiable economic item vs. total no-cost withhold</p> <p>-- What arrangement should be made to provide unions with reasonable financial security and membership stability, as against compulsory membership or payment of fees and dues?</p> <p>-- How would such arrangements fit into mer system requirements that continuation of employment be conditioned solely on fitn and be free of all forms of discriminato treatment?</p>

Issue	References	Major Concerns
<p>11. Unfair labor practices</p> <p>What unfair labor practices (ULPs) and procedures should apply to parties?</p> <p><u>Background</u></p> <ul style="list-style-type: none"> <li>-- Prohibited practices are necessary in order to protect and guarantee rights and responsibilities.</li> <li>-- Pertain in both private and public sectors but vary in what specific actions are prohibited and how enforced.</li> <li>-- Under National Labor Relations Act: <ul style="list-style-type: none"> <li>General Counsel (GC) of National Labor Relations Board investigates, prosecutes ULP complaints before Administrative Law Judges. All Decision is appealable to NLRB within 20 days.</li> <li>NLRB decisions enforced by and appealable to Court of Appeals, which applies substantial evidence standard.</li> <li>NLRB may seek district court to enjoin ULP, pending disposition of complaint.</li> </ul> </li> <li>-- Various state laws provide for prosecution by separate body or administrative body itself with burden of proof on complainant or the prosecutor's office.</li> <li>-- Bill before Congress to modify NLRA by establishing Court for labor disputes to hear and determine, replacing that function of NLRB.</li> </ul>	<ul style="list-style-type: none"> <li>-- E.O. 11491 <ul style="list-style-type: none"> <li>ULPs specified for management and unions.</li> <li>Burden of proof on complainant, except in strike cases.</li> <li>A/SUMR hears and rules, with power to order cease and desist; appeals to FLRC.</li> <li>Make whole remedy lacking.</li> </ul> </li> <li>-- H.R. 10700 <ul style="list-style-type: none"> <li>Specific ULPs similar to E.O. 11491.</li> <li>FLRA hears and rules - can order cease and desist and make-whole remedies.</li> <li>FLRA will entertain requests for exceptions if filed within 20 days based on substantial issues criteria.</li> <li>No specific reference to courts.</li> </ul> </li> <li>-- H.R. 13 <ul style="list-style-type: none"> <li>Net. ULPs similar to H.R. 10700, except not ULP to enforce agency shop.</li> <li>Strikes, etc. by unions not listed ULP.</li> <li>Independent category of ULP's for individual.</li> <li>FLRA assumes role of A/SUMR and FLRC under E.O.</li> <li>FLRA has power to order cease and desist, make-whole remedies and disciplinary remedies for supervisors and managers.</li> <li>Access to courts by all parties.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>-- That ULP pertain to both management and union, as in E.O. 11491.</li> <li>-- Who shall bear burden of proof?</li> <li>-- What standard of proof shall apply?</li> <li>-- Whether ULPs in E.O. 11491 be retained, contracted or expanded.</li> <li>-- Central body have adequate authority to enforce, including make-whole remedies.</li> <li>-- No independent category of ULPs, or authority of central body to discipline managers, as that is role of agency.</li> <li>-- The right of one Federal agency, such as FLRA, to take action against another agency.</li> <li>-- Effect of make-whole and reinstatement in context of Veterans Preference Act and existing adverse actions system.</li> <li>-- Relationship and role of courts.</li> <li>-- If strike prohibited who shall enjoin? Central authority? Courts?</li> <li>-- Limitations on taking matter through more than one available procedure, such as grievance and ULP.</li> </ul>

11. Unfair labor practices (con't.)

Issues	References	Major Concerns
<p>--Federal sector moved from sole determinations by agency to hearing and enforcement by A/SLMR; appeals to FLRC.</p> <p>--Burden of proof on complainant, except in S. 19(b)(4) expedited procedure, where Assistant Regional Director (LMSA) prosecutes, has burden of proof.</p>	<p>--H.R. 9784</p> <ul style="list-style-type: none"> <li>• No independent ULP, as in H.R. 13.</li> <li>• Management ULPs similar to H.R. 13.</li> <li>• FLRB handles violations, Office of GC as under NLRB; make-whole remedies.</li> <li>• Procedures on access to court.</li> <li>• Strikes, subject to some limitations, are legal.</li> </ul>	

Issue	References	Major Concerns
<p>12. Standards of Conduct</p> <p>What standards of conduct should apply to labor organizations?</p> <p><u>Background</u></p> <ul style="list-style-type: none"> <li>-- Unions in both private and public sectors required to meet certain minimal standards of conduct:             <ul style="list-style-type: none"> <li>. Report and disclose financial transactions.</li> <li>. Maintain democratic administrative practices.</li> </ul> </li> <li>-- Necessary for protection of employees and integrity of LMR system.</li> </ul>	<ul style="list-style-type: none"> <li>-- E.O. 11491             <ul style="list-style-type: none"> <li>. S. 18 specifies standards.</li> <li>. A/SIMR prescribes regulations and decides alleged violations.</li> </ul> </li> <li>-- H.R. 10700             <ul style="list-style-type: none"> <li>. Similar to E.O. 11491, except as in private sector under direction and regulations of Secretary of Labor.</li> </ul> </li> <li>-- H.R. 13             <ul style="list-style-type: none"> <li>. Requires only that unions adopt own governing requirements on democratic practices and fiscal and financial integrity.</li> <li>. No reporting or disclosure requirements.</li> <li>. No procedures on deciding alleged violations.</li> </ul> </li> <li>-- H.R. 3734             <ul style="list-style-type: none"> <li>. No provisions on standards of conduct.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>-- Standards for protection of employees and integrity of LMR program.</li> <li>-- Continuation of E.O. 11491 standards.</li> <li>-- Procedures on deciding alleged violations.</li> <li>-- Authority of new central body to enforce, or remain as at present with Labor Department.</li> </ul>

## 13. Supersedeure

Issue	Reference	Major Concerns
<p>Under a Federal LMR program based on statute, what should be the impact on existing laws affecting conditions of employment, such as pay, classification, E.O., health and life insurance, veterans preference, retirement, and merit principles?</p> <p><u>Background</u></p> <p>-- Major items such as those noted above are established by law. Most are bargainable in private sector and increasingly are bargained in other public sectors. These are the so-called "bread-and-butter" issues, generally excluded from the E.O. program.</p> <p>-- Unions continue calling for greatly-enlarged bargaining in Federal sector, if but failing to specify what statutes, if any, should be wiped out.</p> <p>-- Issue is central to scope of bargaining, delegation of authority by Congress to collective bargaining process, the method of personnel management in the Federal service, public policy and public interest.</p> <p>-- There is already union involvement through congressional enactments on setting blue and white collar pay.</p>	<p>--E.O. 11491 program is subject to existing and future statute.</p> <p>--H.R. 10700 would not supersede existing laws, but would provide Board with authority over Civil Service Commission regulations that are within the scope of bargaining.</p> <p>-- H.R. 10700 also provides for negotiation on agency regulations issued by authorities above the level of recognition.</p> <p>-- H.R. 13 and H.R. 9784 would supersede laws in subject areas in conflict with its provisions; it is not clear as to how this would work--which laws and the process of termination.</p> <p>• Depending on how the supersedeure provisions of these bills are interpreted and applied, much of the existing statutory structure of Federal employee rights and benefits could be wiped out - to be replaced by what could be bargained between the many unions holding exclusive recognition and agency management.</p>	<p>-- Which laws would or should be superseded, and what would be the effect on various systems?</p> <p>-- Separate retirement and pay systems for unit members and non-unit members?</p> <p>-- Would supersedeure be selective?</p> <p>-- What criteria would be used to determine supersedeure?</p> <p>-- What provisions exist for transition and safeguarding of rights?</p> <p>-- Would statutory benefits serve as floor for collective bargaining?</p> <p>-- Who would determine which Acts would be replaced?</p> <p>-- What would be the impact of supersedeure on personnel management regulations?</p> <p>-- Would consultation between agency and non-union groups (i.e., supervisors, professional associations, minority groups, etc.) be continued?</p> <p>-- Would Federal personnel policies and employee rights and benefits be determined by what happens in about 3400 different bargaining units?</p> <p>-- How would the costs resulting from such negotiations be met?</p> <p>-- Is the Congress prepared to relinquish control over matters traditionally determined by statute?</p>

14. Merit Principles

Issue	Reference	Major Concerns
<p>What would or should be included to maintain a Federal service system based upon merit principles?</p>	<p>--E.O. 11491 and earlier order based on merit principles:</p> <ul style="list-style-type: none"> <li>• No discrimination based upon non-merit factors.</li> <li>• Union membership and activity is entirely voluntary.</li> <li>• Precedence of existing and future laws and regulations.</li> <li>• Emphasis on well-being of employees, efficient work practices and administration of Government.</li> </ul>	<p>--That any Federal LMR program recognize, preserve and clearly spell out the supremacy of merit principles.</p> <p>--That established rights and responsibilities with respect to merit principles be maintained.</p> <p>--That accountability on application of merit principles be specified.</p> <p>--That merit principles and collective bargaining be compatible as regards the paramount needs of the public interest.</p> <p>--That continuity of employment be determined by fitness for the work and without discrimination based on union membership or payment of dues or fees.</p> <p>--That job related factors, and not solely seniority, be determinative in employee advancement.</p> <p>-- That merit principles be defined, and specifically excluded from matters subject to collective bargaining.</p> <p>-- That personnel practices, if any, carried on in name of merit which have nothing to do with merit, and, in fact, may be contrary to merit principles do not serve to hamper diversity and innovation in personnel systems.</p>
<p>-- Merit principles are fundamental to the viability of the Federal Civil Service and effective and efficient public services.</p>	<p>-- HR 10700 is conceptually similar to E.O.</p> <p>--HR 13 and HR 9784 provide no protection for merit principles:</p> <ul style="list-style-type: none"> <li>• Full scale collective bargaining, including use of seniority and union security, in determining job status and advancement.</li> <li>• Virtually all laws and regulations are conditions of employment subject to superseding.</li> <li>• Employees may be required to join union or pay equivalent fee as condition of employment.</li> </ul>	
<p><u>Background</u></p> <p>-- This involves compatibility of collective bargaining and merit principles.</p>	<p>• Special system for Federal LMR accommodates to merit principles.</p>	
<p>-- Full collective bargaining as sought by some unions could - but need not - conflict with merit principles (consideration based upon ability and not non-member factors), as the bedrock of public policy.</p>		



Issue	Reference	Major Concerns
<p>What authority over matters affecting conditions of employment, i.e., LMR, would be delegated or retained by Congress?</p> <p><u>Background</u></p> <p>-- Congress has retained or has specifically delegated authority over many items which are not subject to collective bargaining, e.g.,</p> <ul style="list-style-type: none"> <li>• pay; classification; retirement; and insurance.</li> <li>• rights of employees in regard to appeals on adverse action, EEO, classification.</li> </ul> <p>-- Such areas are of interest to unions representing employees and unions continue to exert pressure to make them bargainable.</p> <p>-- Congress and authorities such as the CSC and agencies retain control on certain of these matters in the interest of mission accomplishment, cost, and equity through use of regulations and policies which unions see as unjustifiable roadblocks to negotiation.</p>	<p>15. Congressional Authority</p> <p>-- E.O. 11491 provides that negotiated agreements be governed by existing or future laws and regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual. Thus, laws of Congress, and regulations issued pursuant to them are controlling.</p> <p>H.R. 10700 follows E.O. 11491.</p> <p>H.R. 13 and H.R. 9785 broadly define collective bargaining and conditions of employment so as to cover virtually all aspects of employment, including pay practices, fringe benefits, work procedures, etc.--while providing for superseding of laws, Executive Orders or regulations which relate to or are in conflict with the concept.</p> <ul style="list-style-type: none"> <li>• Thus, related authority presently retained or delegated by Congress could be subject to collective bargaining.</li> </ul>	<p>-- That there be appropriate balance of authority on conditions of employment between what is retained by the Congress and what is subject to collective bargaining.</p> <ul style="list-style-type: none"> <li>• Effective cost control.</li> <li>• Effective and efficient public services.</li> <li>• Meaningful bargaining on appropriate matters, subject to public interest criteria, with accountability ultimately to representative of the general public.</li> <li>• Equity to employees; basic rights and benefits be assured.</li> </ul>

## 16. Employer

Issue	References	Major Concerns
<p>An essential prerequisite to the process of negotiations is the clear identification of the "parties" who generate the give-and-take that culminates in mutual agreement, and who are responsible for the interpretation and application of the terms of the agreement during its life. Genuine labor negotiations, whether bilateral or multilateral, private or public sector, requires at least one distinct and unmistakably identified party, who possesses the legally-constituted and effective authority over the resources to be committed in support of the agreement's terms. This party is the "employer."</p> <p><u>Background</u></p> <p>Meaningful collective bargaining's essential characteristics:</p> <ul style="list-style-type: none"> <li>-- clear identification of parties</li> <li>-- authority to reach agreement at level of bargaining</li> <li>-- responsibility for administration of agreement</li> </ul>	<p>-- E.O. 11491, while containing no definition of "employer", identifies "agency" as "an executive department, a Government corporation, and an independent establishment as defined in Section 104 of Title 5, United States Code, except the General Accounting Office."</p> <ul style="list-style-type: none"> <li>• "Agency" includes all cognizant subordinate echelons.</li> <li>• The scope of negotiations is determined by the authority of management at the level of recognition.</li> </ul> <p>-- H.R. 10700 similar to E.O., except it establishes special bargaining mechanisms.</p> <ul style="list-style-type: none"> <li>• Federal Labor Relations Board to pass on multi-agency policy and regulations affecting negotiable matters.</li> <li>• Higher level regulations must be negotiated with any union or group of unions which hold exclusive recognition for majority of affected employees.</li> </ul> <p>-- H.R. 13 includes as employers departments, agencies, bureaus, activities or organizations of Executive, Legislative, and Judicial branches, Library of Congress, and Federal Reserve System.</p> <p>-- H.R. 9784 similar to H.R. 13.</p>	<p>-- If negotiations with Executive Branch at national level on Government-wide personnel policy, or across agency lines, is intended, who would be the employer representative?</p> <p>-- What authority should be delegated to bargaining agent, and to whom is the agent accountable? Should agent in all 3,400 plus units have power to reach agreement on all bargainable items at the level of recognition?</p> <p>-- How will the separation of governmental powers be preserved? Is it possible to devise a labor relations program that covers all branches of government that is equitable and workable, while continuing to regard each branch as a virtually autonomous employer?</p> <p>-- Must there be one employer, or can there be joint or different levels of employers?</p> <p>-- Who will have ultimate authority when executive branch is controlled by one political party and legislative branch by another?</p>

Issue	References	Major Concerns
<p>17. Impact of Federal LMR Legislation on State and Local Government</p> <p>What impact would Federal LMR have on State and local governments?</p> <p>-- As a catalyst for further LR developments at state and local level? As a model?</p> <p>Background</p> <p>-- E.O. 10988 in 1962 triggered torrent of legislation at State and local level.</p> <ul style="list-style-type: none"> <li>• Prior, only one State (Wisconsin) had legislation.</li> <li>• Since, over 30 states enacted legislation.</li> <li>• Executive orders and ordinances also enacted.</li> </ul>	<p>-- No reference in E.O. 11491 or pending bills.</p> <p>-- Under the IPA, CSC is involved in State and local personnel administration (including LMR) in following ways:</p> <ul style="list-style-type: none"> <li>• Grant Program</li> <li>• Merit Systems</li> <li>• Technical Assistance</li> <li>• Cooperative Recruiting and Examining</li> <li>• Mobility Assignments</li> </ul>	<p>-- What are the probable consequences that would be felt in State and local governments?</p> <p>-- What relationship, if any, should there be between State and local government personnel practices and Federal LMR legislation?</p> <ul style="list-style-type: none"> <li>• Should proposed legislation specifically state inapplicability to Federal grant-aided programs which require merit systems?</li> <li>• Should State/local eligibility for Federal funds (grant or revenue-sharing) be in any way contingent upon presence or absence of LMR legislation?</li> </ul>

## **FEDERAL SERVICE LABOR-MANAGEMENT LEGISLATION**

**WEDNESDAY, MAY 22, 1974**

**U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,  
Washington, D.C.**

The subcommittee met at 10 a.m., in room 210 Cannon House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order.

It's our pleasure again this morning to have Chairman Hampton of the Civil Service Commission back before the subcommittee and, Mr. Chairman, I'm going to ask that you proceed with your prepared statement. At the conclusion of that statement, unless other members here want to return to the portion yesterday, we will try to get questions relating to your statement this morning and then afford them an opportunity as they come in to either ask questions on the subject of yesterday or today. You may proceed.

### **STATEMENT OF HON. ROBERT E. HAMPTON, CHAIRMAN, CIVIL SERVICE COMMISSION, ACCOMPANIED BY TONY INGRASSIA, DIRECTOR, OFFICE OF LABOR-MANAGEMENT RELATIONS, CIVIL SERVICE COMMISSION**

Mr. HAMPTON. Fine, Mr. Chairman.

Mr. Chairman, in our earlier testimony we discussed the history of the Federal labor-relations program under Executive order, the changes that have been made during its 12-year period, the structure of the program and our views concerning the various bills pending before Congress. We also indicated that in our view there is no demonstrated need for the substantial changes embodied in the statutory approaches pending before this committee. Furthermore, we stated our belief that the program as it currently exists does establish a viable system for effective labor-management relations and that this system has been and will continue to be revised to accommodate to any demonstrated needs.

At this time, I would like to amplify some of our views concerning matters that Congress should consider before determining the desirability of establishing a statutory system of collective bargaining for Federal employees. We have furnished our analyses of the broad issues which we think Congress should address in its consideration. These are discussed in some length in our statement for the record.

This statement, Mr. Chairman, is some 80 pages long and I think it gives an excellent history of the fundamental issues and I only hope that the members of the committee and the staff can give them some attention and that we can have further discussion because I think this is a very, very complex subject.

Mr. HENDERSON. I certainly do think it will be very helpful, Mr. Chairman.

Mr. HAMPTON. I think even to the point, Mr. Chairman, on that, I'm not sure how the legislative process works in all this, but I think some kind of joint staff discussion even with people from the unions which are not in the form of a hearing might be helpful. But I don't know whether that's out of order or not in the legislative process. It's that type of subject matter.

Mr. HENDERSON. I appreciate the suggestion and we will keep it in mind.

Mr. HAMPTON. We do believe, however, that certain of these issues warrant priority consideration by this committee and by Congress in the consideration of any statutory program.

The issues include:

The role and authority of the central administrative body.

The impact of collective bargaining legislation on existing laws: the so-called "supersedure" issue.

The scope of negotiations, including such concerns as (1) bargaining unit structure, (2) the presence or lack of economic items needed to provide the "glue" for successful "full" collective bargaining, (3) the presence or lack of congressional authority and oversight responsibilities.

The paramount need to protect merit principles and other expressions of the public interest.

The need to identify who the "employer" will be.

#### THE CENTRAL AUTHORITY

At present, the Executive order provides for a central authority to oversee the Federal labor-relations program--namely, the Federal Labor Relations Council, consisting of myself as Chairman along with the Director of the Office of Management and Budget and the Secretary of Labor. In other words, the President's principal personnel, fiscal and labor-relations officials with their broad and centralized authorities in areas affected by labor-management dealings are empowered to regulate and administer labor-management relations.

Each of the bills now pending would establish an independent regulatory body appointed by the President, with the advice and consent of the Senate, to administer the Federal labor-relations program. Although the number, responsibility and authority of the members of the administrative body vary, there is a common denominator in all of these bills. All would establish a regulatory body which would have the authority to dictate to other Federal agencies in the Executive branch that they take certain actions.

Such a regulatory body is the so-called "little NLRB" discussed and sought by union representatives for over a decade. The very

nickname used indicates part of the problem presented by an all-powerful, all-encompassing body. The National Labor Relations Board, which administers the private sector labor relations program, has authority to determine bargaining unit structure, exclusive representation, mandatory bargaining subjects and to resolve unfair labor practice complaints. It does not, however, have any authority to determine the wages, hours or conditions of employment the parties must accept. It does not have any authority to supersede other existing laws.

In sharp contrast, the so-called "little NLRB's" proposed by some of the pending bills being considered by this committee would be given a type of authority the National Labor Relations Board has never had.

We certainly do not oppose a central administrative body if and when legislation is enacted. But we are concerned with the authority of such a body and feel strongly that the Congress should carefully delineate its role and structure. Necessary limitations or protections could be accomplished by the makeup of the body and/or specifically listing those areas over which it could and could not exercise authority. This is an issue that cannot be ignored.

The approach in some bills of empowering a regulatory body to direct other Presidential appointees to carry out certain actions of very real and direct consequence in performing their statutory responsibilities without checks and balances and without congressional oversight is not only novel in the Federal establishment, but poses serious practical, as well as statutory, problems which we believe this committee must consider and consider most seriously.

Although Congress has created many regulatory agencies to implement its statutes as they impact on the general public, on labor, or on industry, it generally has not, with the exception of the Civil Service Commission, established any authority, any commission, any board with the sweeping power envisioned in pending bills to oversee compliance with personnel management and related requirements among other Federal agencies. And even our enforcement authorities are subject to considerable statutory limitations.

Let me just cite a few examples, Mr. Chairman:

In the Civil Rights Act of 1972, the equal Employment Opportunity Commission was given authority over all other employees but Congress specifically did not place Federal agencies under the regulatory wing of the Equal Employment Opportunity Commission; rather, Congress elected to give this role to the Civil Service Commission.

When Congress decided to extend the Fair Labor Standards Act to Federal establishments and to State and local employees earlier this month, it again placed the administration of Federal-employee coverage with the Civil Service Commission.

When Congress established systems for determining and applying prevailing rates applicable to the private-sector employees of Federal contractors (Walsh-Healey Act and Davis-Bacon Act), it placed these functions in the department of Labor. When, however, in 1972, a statutory system of prevailing wage rates was established for

Federal blue-collar employees, Congress placed its administration in the Civil Service Commission.

Similar examples of statutes vesting in the Civil Service Commission the responsibility to implement statutory requirements concerning Federal employees are included in laws dealing with adverse-action appeals, retirement, health benefits, life insurance and leave administration. In fact, we can say without overstatement that in virtually every instance (outside the areas of occupational injury and safety) in which a Governmentwide system has been established by Congress to protect Federal employees, the responsibility for administration has been placed in the Civil Service Commission.

These comments are not an invitation to place a statutory program for Federal-employee labor relations in the Civil Service Commission; they are offered only to point up Congress' traditional and continuing recognition of the special, integrated nature of personnel administration in the Federal Government. In fact, I would like to add here that I really don't think that if a statutory program is established in another body that the Commission would be the place that this program would be.

The consistency of approaches adopted by Congress to date reflect the very real problems associated with the establishment of an authority outside, and in addition to, our central personnel agency to direct other Federal agencies to take action in the area of personnel management or to seek compliance with its directives by instituting court action against a Federal agency.

#### SUPERSEDURE

The issue of the impact of labor relations legislation on existing laws is a natural "follow-on" to the concern with the undefined but apparently unlimited authority given the "little NLRB's." One of the most vexing problems currently surfacing in States which have enacted laws granting collective bargaining rights to their own employees is the overlap and interaction of such laws on other legislation covering personnel policies and practices applicable to these same employees. Where the laws have been drafted carefully, where the continued commitment to merit principles and the public interest have been maintained, friction has been minimized. Where, however, this was not done, friction and disputes have mushroomed with the courts being placed in the position of determining which laws should have precedence.

Of the bills before this committee only H.R. 10700 deals with this issue in a direct and, in our opinion, appropriate manner. H.R. 10700 clearly requires the continuance of all existing laws and related regulations required to implement and administer those laws. Other bills speak in terms of supersedure of existing legislation covering this same subject matter. Since those bills cover everything conceivable in the area of personnel policies and practices, a literal reading would wipe much legislation off the books. Title 5, including Veteran Preference, conceivably could cease to exist, at least insofar as employees in exclusive bargaining units are concerned.

Supporters of those bills claim this interpretation was not intended but they are reluctant to speak to specific laws and issues. Will

laws involving pay and fringe benefits prevail? Will they be superseded? Will they continue and serve as a guaranteed floor from which negotiations must begin? What about the Classification Act? the Civil Service Act? the Retirement Act? the Health Benefits and Life Insurance Act?

The list could go on and on. Suffice it to say, unless this issue is dealt with head on in any consideration of broad-gauged legislation, it will be decided by the courts after much turmoil between agencies and labor organizations.

#### SCOPE OF NEGOTIATIONS

The scope of bargaining issue is a continuation of the supersedure issue, just as supersedure concerns flow logically from consideration of the structure and role of a central authority.

Obviously, the scope of bargaining is affected by the controlling or noncontrolling impact of existing legislation. But this is only part of the problem. As we have previously noted, the Federal labor relations structure is marked by extreme fragmentation of bargaining units. We have over 3,400 exclusive units, some quite small and far-removed from ultimate authority on many personnel management matters. As long as the scope of bargaining was clearly limited to only that authority help by the top management official at the level of recognition, few real problems developed. These limitations were clearly understood by the parties; in fact, union representatives acknowledge and subscribed to them in hearings before the task force chaired by former Secretary of Labor Goldberg which led to the issuance of Executive Order 10988 in 1962.

As exclusive recognition has grown, and unions have expanded, the limitations of 1962 no longer are accepted. This is understandable. What is not understandable and what this committee must carefully consider are the provisions of some bills that would give the bargainiers in all those thousands of units the authority to "override" all higher level regulations, both within and outside the agency involved. To put it another way, there was justification for finding thousands of small units appropriate for exclusive recognition when the scope of bargaining was limited to the authority of the management official at the bargaining unit level, but there is no justification for greatly broadening the scope of bargaining without at the same time reassessing the continued appropriateness of the units.

An increasing number of States that have been faced with this problem have decided that if the rules of the game are being changed—scope of negotiation—then the determination of "teams" should be changed. Thus, they have legislated broad bargaining units or accomplished the same result through stated criteria and policy direction to the central authority.

H.R. 10700 attempts to deal with this problem through a complicated system of ad hoc, coalition-type bargaining on higher level regulations within the agency and equally complicated but even more potentially disruptive "quasi-negotiations" on regulations issued by central agencies which have government-wide application. As indicated in my earlier testimony, this problem of dealing with higher level regulations is a serious and difficult one. You are to be com-



mended, Mr. Chairman, for attempting to find a solution. However, in all candor, I must say the proposed solutions in all the bills before this committee are not only unacceptable, but potentially very damaging to the efficient and effective operations of Government.

This brings us to a consideration of the dynamics of so-called "full" collective bargaining. In the private sector, the economic package—the bread-and-butter items—provides the glue—or trade-offs—that enables the parties to resolve their differences. The union is able to show results and management is able to protect its vital need to retain the essential tools of managing. This is particularly important where, as in most of the pending bills, no provision is made for the mandatory protection of management rights.

When, however, direct negotiation of economic items within each bargaining unit is not feasible, and we believe that is the case in the Federal structure, the dynamics of bargaining cannot operate. True there can be much room for bilateral decisionmaking in a broad area of personnel policies and practices, but an elaborate system of "full" collective bargaining with compulsory, binding arbitration of impasses, as envisioned by pending bills, cannot operate successfully. For example, demands for detailed procedures and practices to be followed in carrying out management's personnel responsibilities which seldom become impasse or "strike" issues in the private sector because of compromise language arrived at through economic concessions, remain at impasse to be decided through the arbitration process.

I think this is caused, Mr. Chairman, by the fact that economic concessions may have been made in another arena and with involvement of union representatives, but these concessions play no role in determining the contract language at another level. This is a round-about way of saying that without the full economic package and without labor being able to say to their members that we have obtained this for you, negotiations tend to concentrate on procedures and the fine legal aspects of an agreement.

Would the Congress be willing to turn over authority for economic benefits to over 3,400 bargaining units without control on appropriations, without oversight responsibilities, with no way of explaining to constituents why they are being treated differently from identical employees working for the agency but in a different bargaining unit? If not, the Congress must give serious attention to the scope of bargaining envisioned in pending legislation.

PARAMOUNT NEED TO PROTECT MERIT PRINCIPLES AND OTHER EXPRESSIONS  
OF THE PUBLIC INTEREST

The basic concept of merit as the guiding factor in the employment, promotion and retention of Federal employees has long been determined to be in the public interest.

If the principle of merit is not to be eroded or superseded altogether in the collective-bargaining process, then very careful consideration must be given in several areas. A major concern involves proposals which would mandate union membership—or payments in lieu of such membership—as a condition of acquiring or continuing employment. Such a statutory provision, which was rejected by the Con-

gress in passing the Postal Reorganization Act in 1970, would constitute a non-merit intrusion in personnel decisions. While we recognize the real concern for union security, some other way to accomplish it must be found other than denial of freedom of choice.

Promotions predicated solely upon seniority, a provision frequently found in the private sector, similarly would be contrary to the current system which provides that merit shall be the determinant for promotion. Private-sector type agreement provisions which determine the mix of helpers, apprentices and trainees would not only be incompatible with Federal-sector merit considerations; they could cripple an agency's ability to perform its mission.

This is not to say meaningful collective bargaining cannot take place with respect to most employee concerns without damage to merit principles. While the principles themselves should never be compromised, there is ample room for the negotiation of alternative procedures and practices by which the principles can be effectuated. However, the laws and implementing regulations that protect merit principles must specifically take precedence over the terms of any collective-bargaining legislation or agreements flowing from such legislation.

Of course, concern for the public interest cannot be limited to preservation of merit principles. It is our firm belief that all public policy issues such as, but not limited to, mission, budget, choice of methods, means and personnel should be determined by the normal political processes set up by the electorate and answerable to the electorate so that institutionalized collective bargaining machinery does not overwhelm other competing and legitimate public interest groups.

#### NEED TO IDENTIFY THE EMPLOYER

We have discussed the need to address what subject matter should be negotiated, the level at which it should be negotiated and the interface with existing legislation and governmental structure. All of this has a bearing on the vital issue of who the employer shall be; that is, who represents the executive branch in negotiations as envisioned by pending bills? Obviously, if the concerns we have addressed are successfully dealt with, the matter of identifying the employer automatically is resolved. If, on the other hand, approval is contemplated of provisions in some bills that would permit negotiations on a wide range of wages and fringe benefits, then serious consideration must be given to identifying the employer.

For example, in determining executive branch white collar pay the President is the employer and his designated agents are the Director of the Office of Management and Budget and the Chairman of the Civil Service Commission. In determining blue collar pay, the head of an agency is the employer, and he is bound by policies and regulations issued by the Civil Service Commission with the advice of a union-agency advisory board. In determining most fringe benefits, the Congress and the President act together as the employer.

If broad-gaged legislation is passed, the issue must be addressed with an eye to not fragmenting the employer in a manner inviting whipsawing, inequities, confusion and lack of authority at the bargaining table and uncontrollable costs.

As I indicated earlier, what I have discussed is not an exhaustive list, nor an exhaustive analysis. Instead, I have attempted to highlight some of the most fundamental considerations posed to this committee; others are included in our statement for the record.

I am certain that in your deliberations you will consider other important matters. My failure to mention other issues we have raised—such as the denial to Federal employees of the right to strike and alternative machinery for resolution of impasses—should not be construed as minimizing their importance.

Although we have attempted to show that the present program is satisfactory and successful and that there has been no demonstrated need for legislation, we recognize that others may not agree. In your deliberations, we ask that you seriously consider the issues posed. We would be pleased to discuss with you any issues, at any time, on which you may wish additional clarification, or to answer any questions you may have.

In closing, I would like to again express my appreciation for the courtesy you have extended in giving me these 2 days in which to testify.

Mr. HENDERSON. Thank you, Mr. Chairman.

For the benefit of the members, Chairman Hampton has just completed his prepared statement which he had planned to give for the second day of hearing. Some of the members yesterday suggested they had questions they would like to submit today or ask today of the chairman regarding yesterday's testimony. If you'd like to do that the Chair would afford you any opportunity at this time, or if you have no objection we will go right into questions and open up the entire subject for the members for questions on either day's presentation by the Chairman.

Chairman Hampton, in discussing the role and authority of the central administrative body, you indicated you had no objection to such a body but you did have concern with the functions assigned to the central body. You specifically referred to the National Labor Relations Board and the possible correlation with this legislation.

What suggestions or ideas do you have as to the functions and responsibilities that should be assigned to a central administrative body?

Mr. HAMPTON. Well, giving you a rather informal opinion, wanting to keep options open as we go along through this process, I don't want to be bound by anything that I say about the role of this kind of a body at this time because I think it depends upon many other things.

Mr. HENDERSON. Yes. It very definitely does, but I think it would be helpful for us to have your ideas within the constraints that you suggest. I want to keep the same options open.

Mr. HAMPTON. Well, I would envisage, say, an operation of a central authority as assuming the duties and responsibilities that now rest with the Assistant Secretary of Labor and with the Federal Service Impasses Panel and with the Federal Labor Relations Council.

Mr. HENDERSON. If I could interrupt right there, starting from that point, leads me to ask another question. You have indicated that the

central regulatory body as you envisage it in the bills would have authority to dictate to other Federal agencies in the executive branch.

How do you see that the legislative proposal differs from a council under the existing Executive orders regarding the dictating to Federal agencies?

Mr. HAMPTON. Well, the Council really cannot dictate to Federal agencies in the broad way. I mean, the parameters of the Council's action are related very strictly to interpreting the Executive order. So it cannot go beyond those bounds that are spelled out in that Executive order. In other words, we can't initiate a new policy. We have the authority to enforce a decision that usually comes to us in the form on an individual case. Only recently have we changed our rules to allow a major policy issue to be brought before the Council by both parties in order to make a determination under the Executive order.

Mr. HENDERSON. But to the extent that decisions are made in matters before the Council, they are binding on the agencies, aren't they?

Mr. HAMPTON. That is correct. They are binding on the agencies but they are limited to only those things that are spelled out in the Executive order and that's mainly in the relationship area.

Mr. HENDERSON. So do I understand from your testimony that if the central body we would create in the legislation is limited in its authority to decisionmaking and circumscribed within those areas, it could function comparably to the Council now?

Mr. HAMPTON. I would think that you could so structure a body. There are certain authorities that the Council has because of its membership; as Chairman of the Civil Service Commission I have broad statutory authorities to regulate. If deficiencies are noted, then I can use that regulatory authority to make changes in the basic system. I wouldn't recommend this to a body that was separated from all of the other statutory responsibilities.

Mr. HENDERSON. That leads me to another question. Do you feel that as we provide for the Chairman of the regulatory body the Chairman should be the Chairman of the Civil Service Commission or his designee or the appointee of the President? Let me add, in the instance where I would require a Chairman to be appointed by the President, it certainly would be my great hope that the President would consult with the Chairman of the Civil Service Commission. He would take his recommendation. But I'd like to have your feeling as to whether or not or how wise it would be that we designate the Chairman of the Civil Service Commission as the Chairman of that regulatory body.

Mr. HAMPTON. No, sir. I don't think the Chairman of the Civil Service Commission should be. I think that—I mean, I'm just thinking in my own mind how I would envisage such a body—that it would be essentially a body outside of any existing organization of government; in other words, a creation of a new body with new people, but that there be parameters on their authority considering the existing statutory structure of what the Congress is already giving and the Constitution gives to the heads of agencies and the

other authorities given to the Civil Service Commission and the Office of Management and Budget over economic matters.

Mr. HENDERSON. What would you think of the requirement that the Chairman or the Commission designate the Chairman of the regulatory body?

Mr. HAMPTON. Well, it all depends upon what you do before that. In other words, how you structure in the statute and what the duties are. I would really think that the Board should be a Board that is appointed by the President and confirmed by the Senate and would be independent of any ties with the Civil Service Commission. I think there has to be provisions of consultation where if they're dealing with an issue that requires some sort of better understanding of a statute or policy of the Commission which is based on statute, that they would seek our advice.

Mr. HENDERSON. Arguing just for a moment contrary to your position—and I certainly am appreciative of the difficult task you have as Chairman of the Commission—but the concern I have in the President's nomination and the Senate confirmation is whether or not the primary emphasis would be that we have someone serving as the Chairman of the regulatory body who does understand the real differences between private sector employment and what we are attempting to do with the Federal sector.

One of the big problems you have highlighted in your testimony we must always keep in mind is that if we're talking about a little "NLRB," and I think that has great danger as we discuss the regulatory body here, the tendency could be on the part of a President sometime in the future to pick someone who has great expertise in labor-management relations in the private sector and be the most unknowledgeable practitioner in the world with regards to this legislation and the responsibility of the regulatory body. It's for this reason I continue to explore the possibility of the Chairman of the Civil Service Commission or his designee naming the Chairman of the regulatory body or choosing the Chairman from members of the Board.

In other words, at least it would be limited—he would be picking who he thinks is the best qualified person from the membership. I would certainly express my great support and feeling that if you had this responsibility upon the enactment of the legislation you certainly would not go out and seek one who had negotiated contracts between U.S. Steel and their workers, for example, but rather, you would look within the Federal sector. I think you would agree with me that from these 12 years of experience we have on both sides of the table within Government and labor organizations very competent people to serve on a regulatory Board and serve as a Chairman with good understanding of the constrictions that are necessary in the public sector.

Mr. HAMPTON. Well, I have to agree with you, I mean, in terms of my own experience of being Chairman of the Commission and Chairman of the Federal Labor Relations Council. As we go along in the number of years that we have had under 11491 I think the fact that I served in both capacities was a plus because of the knowledge of what really goes on in the personnel management areas

in the public sector. And it has been I think invaluable to have that experience and if the Congress thinks this is a desirable thing, then whatever the Congress passes in law that's what I deal with.

The other thing, if I were given the authority to appoint such a person, I would appoint someone that had a distinguished record of understanding the public sector problems. They are significantly different. It has been the major problem that we have faced from the outset of this program, particularly when we began to bring in third parties, that everyone that had experience in labor relations essentially had that experience out of the private sector and they tended to draw similarities where similarities really did not exist; and we have had to build over a period of years experts in the public sector and that expertise is in the unions today that represent Federal employees and in the people who administer the program in the Department of Labor and within the agencies; and I agree with you that it's quite significant and it's always difficult to explain.

Most of the participants in the conferences and seminars and things that I go to with the bar associations and all and the academics are all experienced in the private sector, but not in the public sector, and the problems are unique. So there's considerable merit in what you say.

Mr. HENDERSON. I hope through these hearings we are able to demonstrate that we have the quality of personnel in the Federal sector both within the employee organizations and on the management side to perform very competently in this area. I certainly recognize this. One of the reasons I believe legislation is timely is that I have seen such great improvement in understanding on both sides of the bargaining table. This has given me a great deal of satisfaction.

Let me move on to supersedure before my time expires. You pointed out H.R. 10700, the bill introduced by Mr. Dulski and me that no laws would be repealed.

Do you know of any other way to do this except to run a risk that this kind of legislation does supersede law without Congress specifically knowing what we're doing?

Mr. HAMPTON. Well, I think in the other bills, as I pointed out, the language—and I don't recall offhand specifically—but it says that all laws affecting these matters—well, there's nothing in the personnel business that isn't covered in some way in the labor relations incident, and even though people have said this is not the intent, what I'm saying is that if that is not the intent, then it is the job of the Congress to say what it really means very specifically so that we do not have continual litigation in the courts; and it was the other point about the central body.

The central body can, by its action, say that this law is now superseded by our judgment and I don't think it was the intent that that be done; but it needs to be addressed very specifically.

And I think the very real issues here that come out that the Congress must address—it's very easy and very simple to say full collective bargaining and full situation of rights, but you have a management that is constrained by the board of directors in the

Congress and what is the Congress' role going to be in the economic area? What happens if you have a law and we do have the economic package and the economic package, as we have tried to point out, is the glue that sort of holds together any kind of collective bargaining relationship that is going to be similar to the private sector.

But I do not think that the Congress is willing to say to the President of the United States:

You have the authority to set pay completely, both blue collar and white collar, to negotiate whatever you negotiate. You have the right to affect all of the conditions of the retirement system without any congressional review. You have the right to change the health benefits package. You have the right in life insurance. You can change Veterans Preference.

All of these things have an 83- or 90-year history.

Now I just wonder, if this is the case, then you can have bargaining that's similar to the private sector but then you even run into the unit structure.

Mr. HENDERSON. Well, I want to touch on one item that I believe makes the point so well. You have touch on it. That's veterans preference.

If this committee wants to get this legislation in a turmoil and be sure that it doesn't pass or it gets all torn apart, all it has to do is try to get into that area. We are vitally interested as Members of the Congress is veterans preference. I hear from time to time that some people want changes to veterans preference. I could even admit that if I were legislating alone and going back over this, I might not devise the law just as it is today, but it has been law and it's so meaningful. I think a word of warning needs to be given to all of us on this committee. We have got to be sure that we protect veterans preference. If there's anything that has been clear out of the Bolling committee report with regards to jurisdiction, it's that one of the big problems in this Congress is the overlap or assuming of jurisdiction. Certainly you and I have had much experience with regards to the supergrades in the Federal sector. I noted just recently—and I think it's worthy of note here—that Mr. Dulski, in his recommendation to the Hansen subcommittee suggested that rules of the House make it clear with regards to all other committees of the Congress that they be restricted and this committee's jurisdiction should be protected to that point.

So I think that in the formulation of this legislation you have pointed out an area in which we must be very careful or we will do more damage than simply superseding existing law.

Mr. HAMPTON. In following on that, one of the things I have noted recently is that we have had three major bills that impacted on Federal employees and the Commission was not even given the opportunity to testify on such legislation that came out of other committees. I mean the Fair Labor Standards Acts amendments having a significant impact, far greater than was anticipated; also the age discrimination provisions that were in that; and the Rehabilitation Act which sets up the structured program dealing with the handicapped.

Those were matters that I think should have been under the jurisdiction of this committee to at least take testimony on and to observe its impact.

Mr. HENDERSON. Let me respond on two of those. On the Fair Labor Standards Act, your point is well made. It was with the assistance of Mr. Dulski, Mr. Gross and members of the committee we were able to get the provision for the administration of that legislation in the Civil Service Commission. I felt very strongly that this was where it should be and we had some success which you noted in your statement.

But with regards to the handicapped bill we were not able to, and not only were you not able to testify, but I found the attitude of the managers in the House when it was being considered was absolutely adamant. I realize that we have a primary commitment to this legislation in the next few weeks, but just as soon as I finish this, you can be sure that HEW officials, as relates to the program of the handicapped, are going to be sitting right where you are and they are going to spend more days than you telling this committee how they are operating over there and what they are paying their people, simply because they did rape the jurisdiction of this committee and run all over us. They will certainly account for their stewardship of the very broad authority they received.

Mr. HAMPTON. May I mention this one other thing that was on a point—

Mr. HENDERSON. And I hope the press made note of that and the public.

Mr. BRASCO. Double-spaced, fellows.

Mr. HAMPTON. One of the things you mentioned about Veterans Preference, when that issue was faced in the Postal Reorganization Act, that act was not repealed.

Second, one of the issues that I think this committee has been dealing with is the fact that no provisions were left in for congressional oversight, and the Congress has been fighting that issue ever since the Reorganization Act was passed.

Now you have absolutely no oversight of some of these bills that are passed, and, quite frankly, I have been in the executive branch for 20-some-odd years and I think public interest issues and oversight belong in the Congress. And I think that in any kind of a bargaining situation where you have a monopoly where employees have the right to strike and the tools of settlement, if they are not in the hands of management and they are unable to settle and then the public begins to bring pressure on appointed officials who are there for a limited period of time, the tendency is going to be for excessive settlements. And I think the Congress, as the elected representatives, is the only body that has the wherewithal to resist such pressures.

Mr. HENDERSON. I thank you very much. I have some other questions I will come back to. At this moment let me yield to Mr. Brasco.

Mr. BRASCO. Mr. Chairman, yesterday we made an observation—well, the chairman made one and said this was rather dry material



and I agree with that. You said it was rather complicated and it certainly is. But the thing that really troubles me—and I admit it and I don't say this facetiously but just to make a point—basically, what the problem is, as I see it, is that the role of the Civil Service Commission is so intertwined in so many areas that it, of necessity, becomes involved in a real conflict. And I understand and appreciate the fact that it's a difficult bill to work out, but I think that you fellows have the expertise if you were for the bill in some way to help us work it out.

For instance, in this Executive order it says public interest requires high standards of employee performance and modern work practices to improve employee performance and efficiency. Efficient administration and employee well-being require orderly and constructive relationships between labor organizations and management officials.

That's the preamble of the Executive order. Is that correct?

Mr. HAMPTON. That's correct.

Mr. BRASCO. Isn't that conflicting in and of itself? I mean, you're wearing two hats and sometimes more than two hats and this is the problem I think the employee organizations perceive and that's why they have been complaining about it. I want you to answer.

Mr. HAMPTON. My view is that efficient operations come about through good employee relations. I think the two go hand in hand. In other words, I see a benefit to having good relationships with the people who are doing the work.

Mr. BRASCO. But don't you think that from time to time the trying to strive for both of these goals could put you in a conflicting position?

Mr. HAMPTON. I have never run into that kind of conflict to date with the—

Mr. BRASCO. You say no?

Mr. HAMPTON. Yes; I say no.

Mr. BRASCO. Well, getting down to the administration portion of this, you have the situation where the Civil Service Commission, even under this Federal Labor Relations Council, is responsible for providing all the administrative support and services to the Council. Is that correct?

Mr. HAMPTON. That administrative support is only to the extent of providing them with space and the fact that I go before the Congress and testify as to their budget.

Mr. BRASCO. No bodies?

Mr. HAMPTON. The Council—no bodies. They are all employees of the Federal Labor Relations Council and they are not employees of the Commission.

Mr. BRASCO. So that role, you feel, doesn't put you in a unique kind of position with respect to the Council?

Mr. HAMPTON. No, there's no intermixing of the people whatsoever.

Mr. BRASCO. Well, going down a little further, the Federal Service Impasses Panel supposedly has independent authority, but organizationally is located within the Council for services and staff assistance.

Mr. HAMPTON. The Impasses Panel is made up of people that are recognized nationally in their field. We have no direct input or contact or provide any kind of support.

Mr. BRASCO. In the Executive order it says specifically that the Impasses Panel is organizationally located within the Council for services and staff assistance. Now I think Chairman Henderson pointed out very clearly when we began the hearings, thanking the staff for their tremendous amount of work, and there's no question in my mind that staff has an important and an influential role with respect to development of legislation because you work side by side, but it just seems to me that there's an overlapping of staff; that, in and of itself, is a problem, and I wanted to ask you whether or not you perceive it as a problem.

Mr. HAMPTON. There's no overlap of staff. The Impasses Panel has its own executive secretary. He hires the people on that staff and he reports directly to Mr. Seidenberg, the chairman of the Impasses Panel.

Mr. BRASCO. Well, we can settle this very quickly, Mr. Chairman. You say this statement is incorrect when it says that the panel has independent authority but is organizationally located within the Council for services and staff assistance? You say that portion that relates to staff assistance is incorrect?

Mr. HAMPTON. Well, staff assistance doesn't mean providing people to perform the duties.

Mr. BRASCO. What does that mean?

Mr. HAMPTON. It's simply the housekeeping types of functions. They are included in the budget of the Council and they are housed in that and that is all. In fact, the only time that I ever see Mr. Seidenberg, the chairman, is when we get together all of the third parties to critique the program. That is to say, what kind of problems have you run into; what kind of changes can be made to improve the program—there's no communication on any cases or any overlapping staff work or anything of that kind.

Mr. BRASCO. Well, let me drop down a little further where it gives the duties of the Assistant Secretary of Labor for Labor-Management Relations, and down at the bottom it says a member of the Civil Service Commission will perform duties of the Assistant Secretary when such matters involve the Department of Labor. Isn't that overlapping?

Mr. HAMPTON. No. In that particular case, if there's an issue involving the Department of Labor in terms of their own internal problems, rather than have those people in the Department of Labor perform the services for that—say they have an unfair labor practice; you don't want Labor Department people considering an unfair labor practice. In this case the Vice-Chairman of the Civil Service Commission hears the case and deals with it like the Assistant Secretary would normally deal with it, and the Vice-Chairman of the Civil Service Commission has absolutely nothing to do with the Federal Labor Relations Council.

Mr. BRASCO. I certainly do appreciate your explanation of it, but to me, as I see it, we just have an agreement to disagree. It just seems that it's too much of an overlap and it seems to be too clubby

and too chummy in terms of the general mission that is supposed to be set forth.

In your discussion with the chairman a moment ago, you said that—at least I thought you said if such a bill were passed you thought the Civil Service Commission should be out of it.

My own thought would be that the Civil Service Commission had a mission and has a mission to be involved in the protection of employees. That should be its mission. Management should be concerned with general productivity and efficiency of the Federal work force, obviously, as it relates to the American citizens who pay the tab; and any one of these bills that has an independent authority to be there is the arbitrator between management and labor.

Let me go on for a moment. We talked about bilateralism in the context of labor relationships and I suppose that by definition is two parties, labor and management, of equal strength, conducting negotiations toward a goal and obviously ultimately reaching agreement.

Now with regard to the Federal Employees Pay Council, the President has total authority to accept or reject the suggestions of this Council, and the record of the President in this regard has been to delay all pay increases and reject all Pay Council suggestions.

Mr. HAMPTON. I'm not sure that in every instance—I know that—

Mr. BRASCO. But the point is, though, does that bother you that after somebody says—

Mr. HAMPTON. Well, there's no real, in the use of the term, bargaining. I mean, the President can accept the recommendations or he can go for an alternate plan. In the cases during the economic stabilization period we went for deferrals, but it's been upset by Congress, in one case by the courts, because he did not submit to the Congress an alternate plan; but that's the responsibility of the President to do that.

Whether or not he followed the recommendations, that's within his prerogatives. It may have been that the agency and so forth recommended something that wasn't bought either.

Mr. BRASCO. But notwithstanding that, doesn't that contradict the point you're making to Chairman Henderson when you were talking about whether or not the Congress wanted to give up its prerogatives in this area?

Apparently, no matter what we do, we have the Civil Service Commission come up—and I have been here on many bills—they're not for any bills. I don't remember when the Civil Service Commission was for any bills that we want to pass that have anything to do with the uplifting or upgrading of labor. The President certainly doesn't care what we do because he either vetos it or sends word back from the Bureau of Management and Budget that it is out of line. So it just seems to me that the argument of our wanting to preserve congressional prerogatives is just kind of an item for debate. As a practical matter, it doesn't work out that way. Would you say that?

Mr. HAMPTON. No.

Mr. BRASCO. No?

Mr. HAMPTON. There were a number of bills that we supported and there a number that we are opposed to.

Mr. BRASCO. I can't remember any.

Mr. HAMPTON. Well, there's a few.

Mr. BRASCO. That you do support?

Mr. HAMPTON. That we do support. I'll agree with that.

Mr. BRASCO. That's the truth of the matter; right?

Mr. HAMPTON. But most of the bills that we were in opposition to were liberalizations in the retirement program, a program that has a \$68 billion unfunded liability that is going to cost \$11 billion in government contributions by fiscal year 1980 on the most conservative assumption, and that's a 5 percent pay increase every year and a 3 percent rise in the cost of living every year. Now there has been, in our opinion, very little hue and cry—

Mr. BRASCO. Well, you were against the health benefits, weren't you? I was sitting on that committee. That's not retirement.

Mr. HAMPTON. Well, we have a package of fringe benefits that now exceeds the best packages in industry by a little over one and some-odd percent. I think it's a question that we're bound to have debate on these issues which I don't see that the debate is wrong. In fact, I think it's good. Where many of the bills that are introduced in this committee are initiated by the unions in the desire to achieve more for employees, which is understandable.

Mr. BRASCO. But that doesn't strike true in terms of your initial statement yesterday when you said this Executive order is working out and the bargaining and everything is working out. It's obviously not because what is happening here is that the Congress is getting involved in terms of attempting to pass legislation which you people can't apparently agree on, and I don't think that there can ever be any agreement because there's really no bargaining. It's bargaining if the employee groups agree with the position that the Council takes. If they don't they're out in the cold.

Mr. HAMPTON. No. The issues that come before Congress are not of the issues that we face in the bargaining situation because we have no authority to change the retirement plan. We have to come to you.

Mr. BRASCO. I know, but I'm transposing the attitude with respect to it.

Mr. HAMPTON. You know, I could turn the question around. How would the employees be if they dealt with management that was essentially against everything? You know, they come to Congress. They're getting a better deal. But the retirement thing, I'll be sending to the Congress very soon a complete report on the status and cost of many of these bills and one of my responsibilities under the law is to keep this retirement system fiscally sound and reasonable. We have the best plan in existence for retirement that is not bankrupt.

Mr. BRASCO. Let me ask you this, Mr. Chairman. How does the Commission view its role in this situation? How do you view your role?

Mr. HAMPTON. Well, in the first place, I have had a number of studies done on what is the appropriate role of the Civil Service Commission and the question of protection of rights is one of how do you view the definition of "protect." In fact, we do have a responsibility to see that employees are unencumbered in the exercise of those rights. It doesn't mean that we prosecute claims in favor of employees and so forth, but we do assure that their rights are protected in the sense that they are given the authority and the wherewithal with which to exercise them.

Now you have to view the personnel operation as an integral part of the management process. I would say that we have to view ourselves as an important part of management as far as personnel administration is concerned and this has really been the thrust of most all of the legislation that has been passed by the Congress and even in the original Civil Service Act, and I think in many cases we are put in conflict with the management of an agency because we're assuring that employees can get—good management is going to see that employees are given the rights that the law says they are entitled to, and so we have the position as a central agency of exhorting management, at the same time leading the personnel management system to continually improve it and modernize it, recognizing the need to be responsive to employee needs.

In fact, yesterday in your opening statement, you said three things that I agree with 100 percent, and that was in your statement, that we must recognize legitimate employee needs; that we must recognize the taxpayer; and we must recognize the ability of agency managers to manage. And most of the conflict that results from our role is one that is an internal type of thing.

My job is a very unpopular job. I mean, we have far more—

Mr. BRASCO. Ours is unpopular too.

Mr. HAMPTON. It is. I agree with you. But I would think we have many more conflicts or disagreements with management as we do with employees but we don't advertise them.

Mr. BRASCO. Let me just ask this one question and then I'll yield back to the chairman.

You discussed yesterday improvements in the Executive order and the bargaining process. You kept using the word "bargaining."

Now, as I understand it, what we're really talking about is that the Civil Service Commission is voluntarily consulting with the unions. Is that right?

Mr. HAMPTON. That's correct, yes.

Mr. HENDERSON. Would the gentleman yield?

Mr. BRASCO. Yes.

Mr. HENDERSON. Bargaining is going on, though, in these 3,400 units you're talking about?

Mr. HAMPTON. Yes. That is correct, and the agreements are quite significant.

Mr. BRASCO. But getting back to my question, doesn't consulting mean that you retain the right to reject?

Mr. HAMPTON. That's correct.

Mr. BRASCO. Then, in that sense, you're not indicating that that means bargaining?

Mr. HAMPTON. It's not bargaining in the private sector sense.

Mr. BRASCO. It's not bargaining in any sense.

Mr. HAMPTON. Well, in the question of consulting, it's just not going to the union and saying, "Here it is. Take it or leave it."

Mr. BRASCO. Well, I consult with my children all the time but that doesn't mean we're bargaining.

Mr. HAMPTON. But there are many things, though, that in consulting with your children you respect their views and you agree with them.

Mr. BRASCO. I usually have the final say. That's what I think the employee unions are objecting to.

Mr. HAMPTON. Well, even under a bargaining situation where they can come to a consensus, there are gives and takes on both sides. We don't have the gives. I mean, we don't have the economic package. I really can't promise someone they will get a better health benefit or a better life insurance or a better salary because they buy something that we're proposing.

We do try to achieve consensus, but I not only consult with labor unions; we consult with management; we consult with public interest groups.

Mr. BRASCO. Just one very short last question. I know that I have a bill and Mr. Ford does and Mr. Henderson does. Don't you really think that the Commission can come up with something in this area that is workable?

Mr. HAMPTON. Well, being very pragmatic about it, I know eventually we're going to have a labor relations law.

Mr. BRASCO. Right. Don't you think we can come up with something that's workable instead of being dragged in by the feet?

Mr. HAMPTON. Well, I would hope so and I hope this is the initiation of that process. The thrust of my testimony—

Mr. BRASCO. Yesterday you said you were against all three bills I thought.

Mr. HAMPTON. Well, that's a good position to start out with when you're bargaining.

Mr. BRASCO. That's bargaining. Thank you.

Mr. HENDERSON. Mr. Mallary.

Mr. MALLARY. Thank you, Mr. Chairman.

Mr. HENDERSON. If the gentleman would yield just a moment, Mr. Brasco opened a subject that is very vital and I want to come back to it, but I think in all fairness we should yield to the other members.

Mr. MALLARY. I will just proceed on a couple areas, if I may, Mr. Chairman, and let me just follow on the area Mr. Brasco was just discussing.

I gather that your position, officially at least, is that the time is not ripe for legislation in this area. Is that essentially right?

Mr. HAMPTON. That essentially is it. I think that the issues are quite complex but our mind isn't closed. I think what experiences we have had has been very pioneering in cutting new ground. What I tried to do in this testimony is simply raise the kinds of issues that I think that the Congress has to consider and that we would like to be a part of that consideration, and the vehicle by which

you get to the point of drafting a bill which is acceptable to the administration and is acceptable to the unions and to the Congress is going to be very, very painful and lengthy in its consideration.

But our mind is not closed because in this area of public administration the whole foundation—your actions are basically based in law and I think for the future and for the benefit of the program and its credibility that we should seek to come up with something that is workable.

Mr. MALLARY. You stated yesterday, I think, that you did not feel that to embed in permanent law the present provisions of Executive Order 11491 would be appropriate. In other words, you felt there were parts of that that were appropriate as Executive order, but would not be appropriate as statutory law.

Do you find any substantial impediments or problems in dealing with the labor-management relations problems that you necessarily face by working under an Executive order rather than working under specific, more precise statutes?

Mr. HAMPTON. Well, right now, I think we face considerable impediments in the Executive order because we have a lack of statutory authority in certain areas. I think one of the critical issues is this question in a process where you're unable to implement the awards of arbitrators that result from the negotiated agreements procedures. We are unable because we do not have the legal authority to make people whole. So I think this is a serious deficiency that must be corrected.

We can still correct that by a special law at the same time leaving the Executive order structure.

The second impediment is one that we're dealing with administratively and at this point I think it's best to keep it that way, and that is what do you do with 3,400 units? This is an awful lot of bargaining going on on a lot of issues. But the limitation there is that they can only bargain up to the level of authority that is given the person they're bargaining with, which is sound to get the process started, but they're outgrowing this. And some of the gut issues are above that level. And what we're seeking to do in the present review of the Executive order is determine how can you deal with this question of higher level of regulations; and the other issue is the continued fragmentation of units.

It would be much easier, believe me, if there were some process where you could deal on some of the gut issues, but the question is who do you bargain with? The practicalities here are quite real. I mean, in the States where they dealt with this, you must keep in mind that a State is a much smaller entity than the Federal Government which is located in 50 States. In state law in a few cases they have been able to spell out the bargaining units and have achieved that kind of stability. In those larger States where they have not been able to spell out units, they have done to some type of criteria.

It's a very complex issue and this is something that the unions are going to have to address themselves to because a lot of unions as you know them today could not survive in the bargaining processes. There will be new elections and new representatives determined. So that's an issue.

The "make-whole" situation is one that is an impediment. The other is the desire on the part of unions to achieve judicial review. Traditionally, the courts do not provide judicial review for any rights that are the result of an Executive order, although it has the force of law. Only if constitutional issues are raised will the courts then review a case. So this is an objective of the unions that could be achieved by separate legislation.

But we have a lot of growing to do. This program isn't standing still and it is moving along quite well. The question is: How long does it go on before you have a statute? And many people feel that the time is here. I feel it's not far away myself because most of the issues that we're now confronted with are ones where only changes in the law are going to achieve it.

Mr. MALLARY. Let me pursue one corner of that issue. I gather from your testimony today that you feel that adherence to merit system principles and the continued prerogatives of the Congress in its budget and appropriations authority precludes collective bargaining in the traditional sense that is done in the private sector.

Mr. HAMPTON. That's right, sir.

Mr. MALLARY. But you don't say at any point that you don't feel that collective bargaining or bargaining is not appropriate. Have you identified anywhere in your statement a list of those areas which you feel would be appropriately bargainable?

Mr. HAMPTON. I don't think we attempted to do that in any way in our statement or even in our background statement, but I think it's one of the things that in the process of considering legislation, considering the responsibilities of the Congress and the executive branch, that must be addressed.

Mr. MALLARY. If legislation is to be enacted, have you addressed yourself to the definition of areas or appropriate scope of bargaining? You have raised the problems—and I gather you don't feel that any of these bills fully outlines what is an appropriate scope of bargaining, but if, in fact, legislation is to be seriously considered, do you have or can you recommend to the committee a listing of the appropriate scope?

Mr. HAMPTON. We probably could. We have many, many discussions among ourselves—Mr. Ingrassia and I and others. We have said to ourselves many times, what kind of a statute can you draft; how can you get at this problem? And we have run into some blank walls. But that doesn't mean that you can't do this, and certainly I will be glad to try anything.

Mr. MALLARY. Thank you very much.

Mr. HENDERSON. Mr. Lehman.

Mr. LEHMAN. Thank you very much. In the school board we ran into one problem that I think relates to this. When we do have a problem, the assistant principal and the principal really don't know who they are with regards to labor-management relations. Which level in the school system is management and which is really labor?

How would you advise us to handle the role of the supervisor?

Mr. HAMPTON. Well, I think defining the supervisor by statute would be really essential in any labor relations law. The question is: Who is the supervisor and what supervisors are a part of management?



Mr. LEHMAN. At what point?

Mr. HAMPTON. Right. Because we have had—this has been one of the critical problems all along. I mean, the claim of the unions that the definition that we have drawn from the Labor Relations Act—the Taft-Hartley—may be too narrow as far as the Federal service is concerned, and I think it should be and must be defined and I think the Fair Labor Standards Act passage affecting Federal employees makes this even more critical because there are exempt and nonexempt categories there in which, by the law, we in the Commission are going to have to come up with the definition.

Here, the Commission may be in conflict with the definition that's in the Executive order. To give you some idea of the problems we're talking about, it's no easy task.

Mr. LEHMAN. I was troubled by that when I was on one of our big school boards and I didn't know exactly who we should be talking to as a representative of management and who do you talk to as a representative of labor. There is an overlap and I think we have to make a pretty careful definition.

Mr. HAMPTON. I agree with that.

Mr. LEHMAN. Thank you.

Mr. HENDERSON. Mr. Chairman, let me come back and go over a matter that both Mr. Brasco and Mr. Mallary went over with you.

It seems to me it's fair to say at the present time that in these numerous bargaining units there is meaningful bargaining going on until you come to the area of statute, which is pay, benefits, and so on, or veterans preference; or we come to Commission regulation or agency regulation; and it's in that area where in our colloquy with Mr. Brasco you talked about the consultation at the Commission level.

Consultation also goes on at the agency level, but once policy has been established it's not unusual at the local bargaining level for the management to say, in addition to the matters of statute, items are not bargainable because of agency regulation.

Isn't it fair to say that under Executive order today there is no negotiation going on in connection with agency regulations and Commission regulations? You've got consultation.

Mr. HAMPTON. Well, there is, in the sense that while the specific regulation may not be bargainable, there are certain aspects of achieving the purposes of that regulation that are bargainable, and this is one of the things that, through experience, both parties are beginning to recognize.

Mr. HENDERSON. Well, don't you anticipate that labor organizations are going to come in and testify that there is a need for legislation in this area. They will contend that at the Commission level you go through the consultation process, but when you receive their comments very little attention is given to their recommendations or their positions, that very little change is made. The argument is also made with regard to agency regulations.

Don't you think that's going to be?

Mr. HAMPTON. Well, I think they will make that charge in all probability, but in our consultation process, to say that no changes have been made that were of their suggestion would be incorrect. It's had a considerable impact and I think very salutary effect. There

have been significant changes made, but that won't keep the charge from being made, because it isn't something we're sitting down on a negotiating table and negotiating.

Mr. HENDERSON. Under the bill that Mr. Dulski and I introduced, H.R. 10700, we require true bargaining at the Commission level. What difference do you see in what you do now and the requirements of the bill for bargaining with the organizations?

Mr. HAMPTON. Well, it would be hard to envision. Mr. Ingrassia may want to comment.

Mr. INGRASSIA. Well, to put the whole thing into perspective first, Mr. Chairman, there is negotiating on agencywide regulations wherever the union has achieved national exclusive recognition, as we call it.

Mr. HENDERSON. How many have you got out of the 3,400 we're talking about?

Mr. INGRASSIA. Probably not 20 or 25 out of that, but in some of the big agencies, for example, the Department of Labor has agencywide contracts that are negotiated with the Secretary of Labor and there are a few other agencies such as that.

Mr. HENDERSON. And wouldn't you envision that if H.R. 10700 became law, you would have more of that?

Mr. INGRASSIA. It could very well be, particularly because the criteria for determining bargaining units could have an impact on whether the unit is appropriate up at the national level. So how you structure your unit will determine to some extent what your scope of bargaining is.

Mr. HENDERSON. In the course of the hearings I want to go in depth into the recent experience we have had with regards to bargaining units. We have had some real problems in this area, haven't we?

Mr. INGRASSIA. That's right.

Mr. HENDERSON. And I think this legislation has got to face up to those problems. Go ahead.

Mr. INGRASSIA. Then in the consultation process it's not just submitting of paper and then a comment back. I know the agencies and I know the Civil Service Commission do a lot of what I call face-to-face or eyeball consultation which is much more effective than asking somebody what their comments are on a piece of paper.

Mr. HENDERSON. As to the question of what the impact would be, under the board proposed in H.R. 10700, I believe the board would have final authority on any personnel matters within the scope of bargaining. This would not be recommendations to the three Civil Service Commissioners. It would be by majority vote. The board is composed of five union representatives, five agency representatives and a chairman appointed by the Civil Service Commission Chairman. Any action they would take would be final. So there would obviously be considerable difference in what presently transpires in that it would go beyond consultation, and a final decision would be reached without involvement of the three statutorily appointed Civil Service Commissioners.

Mr. HAMPTON. And what we're saying is that this is where we come down to the real differences with regards to any bill. This is

the area where you see the greater objections to legislation because this is the area where there's real change in the procedures under the Executive order.

Mr. INGRASSIA. That's right, because the areas now are outside of the scope of bargaining because bargaining units not recognized at those levels would then come under this new machinery. Not only the Commission, of course, but by the provisions of H.R. 10700, any central agency, whether it was the Office of Management and Budget or the Federal Energy Office or the Environmental Protection Agency—anything that they would put out that would have an impact would have to run by this board, and the timetables there would be rather brutal to meet even if it was otherwise workable, which I doubt.

Mr. HENDERSON. But the attempt we have made was to get above the present bargaining level under the executive order to give to the labor organizations meaningful bargaining as it pertains to agency regulations or Commission regulations. The chairman recognized this in his statement.

I was not completely satisfied with all the provisions but I think we have to get over the first decision of what levels of bargaining we are going to permit in the Federal sector. Are we going to keep it as it is under the Executive order so that as they bargain the management side says, "These are not bargainable items at any level," or will we under H.R. 10700 be able to say that those items not bargainable at the bargaining levels that now exist, are bargainable at a higher level.

I would hope, and I feel sure, that the employee organizations are going to address themselves to this important difference because they certainly led me to believe that this is one of the big things they are contending for by way of legislation.

In an attempt to give them better bargaining at the agency and Commission level, we tried to devise a bill that would provide a system and, just as you say, we have the five management representatives, five labor representatives, and a chairman. I'm sure charges are going to be made, Mr. Chairman, that it ends up to be a 6-5 Commission again. We made the best attempt we could and it ought to be obvious to everyone that my decision was to come down on the side of bargaining at the higher level.

Mr. HAMPTON. Well, one of the difficulties I see there, Mr. Chairman, is that who are the five union people going to be and what

five agencies, because in a sense it excludes all others. The other thing is that they are not issues that come up in a collective bargaining type process.

The thing is that that isn't a unit. The five people you would have to say are representing all employees.

Mr. BRASCO. Would the chairman yield at that point?

Mr. HENDERSON. Let me make one other point and then I'll be glad to yield.

You must keep in mind the bill does provide that no statutes will be superseded. So that constraint must be considered in my own view. On page 26 beginning on line 20, we set out what is not bargainable. "Collective bargaining procedures under this subsection shall not involve matters with respect to—" and here's where I try to spell out management prerogative and I want to make this point so you will give us recommendations with regards to anything we have left out of what are management prerogatives. I feel very strongly and I think you agree with me that we're going to have these prerogatives:

(h) Collective-bargaining procedures under this subchapter shall not involve matters with respect to—

- (1) the mission, budget, or organization of an agency;
- (2) the number of employees;
- (3) the numbers, types, or grades of positions or of employees assigned to an organizational unit, project, or tour of duty;
- (4) the internal security practices of an agency; or
- (5) the right of management officials of an agency—
  - (A) to direct employees of the agency;
  - (B) to hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employee;
  - (C) to relieve employees from duties because of lack of work for other legitimate reasons;
  - (D) to determine the methods, means, and personnel by which agency operations are to be conducted; and
  - (E) to take whatever actions may be necessary to carry out the mission of the agency in emergency situations.

So the record ought to be clear that all items are not bargainable even at that level. We attempted to bring bargaining up to a high level but we clearly said in the bill that where Congress has prerogative or Congress has acted the law must be complied with at all levels.

Then we go on to say items which are not bargainable, so I would hope that we would understand that the bargaining at the higher level is ended.

Mr. BRASCO. The chairman was talking about the composition of the board as it appears in 10700, but isn't it a fact that it would be easier as proposed in either one of the two bills, H.R. 13 or H.R. 8794 to have a three-man board appointed by the President with the advice and consent of the Senate from a list of ten persons submitted to the President by the American Arbitration Association.

So you don't have to go through this business of what agency. Isn't that really easier?

Mr. HAMPTON. I'm not sure, but the structure of what you have in 10700 is entirely different than H.R. 13.

Mr. BRASCO. I wasn't talking about all the subject matter. I suppose you could have a board predicated on that and pick up the part of the chairman's bill which says you can negotiate for this or not. But just from the point of view of the composition of the board, isn't that easier to arrive at?

Mr. HAMPTON. Three is a lot easier to arrive at than 11. There's considerable difference in the structure.

Mr. BRASCO. Yes, but I was just talking about——

Mr. HAMPTON. I'm not sure, either, on the question of using arbitrators as members of the board in an area like this is really the best thing. I mean, we're dealing with tremendous economic issues.

Mr. HENDERSON. Don't you think if we are talking about using arbitrators we are talking about arbitrators that are expert in the private sector?

Mr. HAMPTON. In most cases that's where the expertise is, although that's building up.

Mr. BRASCO. That's still appointed by the President.

Mr. HENDERSON. You're talking about a list submitted by arbitrators. Can you imagine an arbitrator submitting to us anybody who has no arbitrating experience in the public sector?

Mr. BRASCO. I don't think that's very comparable.

Mr. INGRASSIA. Mr. Brasco, could I attempt to clarify a previous point? I think we're talking about two different bodies. The body that Chairman Henderson was talking about in his question to the Chairman dealt with his bill's provision for a Federal Labor Relations Board that is separate and apart from the administrative central authority which is in both your bill and the chairman's bill. Three or five-man bodies could administer the law.

Then, in addition, Chairman Henderson's bill has a provision for a Federal Labor Relations Board that would deal only with the quasi-negotiation of matters at the Commission level or the OMB level.

Mr. BRASCO. I understand that, but I just was suggesting that H.R. 13 sort of cuts through the red tape and lays it right on the table without bogging down with what agency should be chosen.

May I ask this question? I know that H.R. 13 has a provision for union shop or agency shop and I know that raises a red flag in many quarters. But let me ask you this question: Why is it not proper for an employee, who derives benefits by virtue of the fact that people working in the same area where he is have organized into a union and are bargaining not only for their own individual benefits but collectively for everyone who is involved on the same job doing the same work, to pay union dues or a registration fee?

If it were in any other walk of life you'd call that guy a free-loader if he didn't want to contribute towards the collective benefits of all. Why is that improper?

Mr. HENDERSON. Mr. Chairman, do you want me to take that, it being a political question?

Mr. HAMPTON. Go ahead. I'd be delighted for you to, Mr. Chairman.

Mr. BRASCO. Really, why is that improper? I don't think you'd find that improper, would you?

Mr. HAMPTON. I think that there should be no condition on the public employment that—

Mr. BRASCO. Why would that be a condition?

Mr. HAMPTON. That an individual has to pay dues or a membership fee to keep his job. I just think that it goes against the whole concept of public employment.

Now turning it around a little bit, union security is what you're essentially talking about. I think it's a real problem. I think that we ought to consider alternatives to that.

Mr. BRASCO. Let me say this: What really disturbs me—and I don't want to take all the time, but maybe I can make the point by telling a little story about the philosopher who is sitting up on a hill with a servant of his and he's looking over this vast gardens and talking with this servant and he's got a real fetish with the gardens and he sees a wild bull chopping up all his flowers and he sends the servant, Erasmus, down there and tells him to take care of that wild bull. He's a real big guy and he goes down there and gets the wild bull and pins it and rolls it out of the garden.

Lo and behold, it's not his day, and he turns around and sees a big horse coming down the garden path. Erasmus just about sits down and he sends him back down there and tells him to bridle that horse and, as a matter of fact, "He's so good-looking, put him in our barn," and he does that.

They get to talking a little more and he turns up to the cherry tree and he sees a big hornets' or bees' nest up there and he turns to Erasmus and says, "Take care of that. It's going to destroy our tree. Get rid of that bees' nest." And Erasmus turns around and he walks away and the master says to Erasmus, "Listen, you threw the bull out of the garden and you bridled that big horse. What's the problem with those bees?" And Erasmus turns and says, "Master, them bees is organized."

And I think what the real problem is is just that management is concerned for no other reason than if there are many more people in unions they are obviously more organized and obviously protecting their rights. I don't think that's a condition of employment.

As a matter of fact, in all the time that I have been here, we have had one group that came before us in one of the bills—I think it was the Seventh Day Adventists group, and they said based on religious conviction that they couldn't do it, but they understood and even agreed with the principle. So unions take their dues and fees and give it to charity or something, and we worked out the problem with them. But I just don't see why it's so frightening other

than the fact that good organization produces a more effective bargaining unit.

Does that make any difference in your previous response?

Mr. HAMPTON. The public employment issue is paramount in my own thinking.

Mr. HENDERSON. I often wonder, Mr. Chairman, if those of us who feel strongly on this issue would introduce a bill simply to give agency shop to all Federal employees—I have been tempted to do this—and to say I will give you that but I won't give you any of the H.R. 10700 or H.R. 13 provisions or anything else, what would we be doing to Federal employees, to union members. It seems to me there's so much meaningful possible legislation that we get hung up on the one little issue here. I think you could say from the headaches and the problems you have had in the experience of the Executive orders that if you could trade all that off and just give union security as such, simply by the dues check-off with the requirement that everybody in an organized unit pay dues, we'd be tempted to do that if we were not conscious about the real meaningful things for employees.

Mr. HAMPTON. You might be tempted to do it, but I just cannot see that as a condition of employment in the public sector.

Mr. HENDERSON. I hope we're realistic as to what we're trying to accomplish because I don't want us to get too bogged down on the problems and I think we'll face these as the employee organizations come to testify on legislation. We have a lot of technical questions that the staff is just chafing to get at and time is almost gone, so let me yield now to Mr. Mesker. I know he's got a number of questions he would like to get in the record and it's much better if we can do it with the Chairman here than it is to simply do it by way of submitting them.

Mr. MESKER. Thank you, Mr. Chairman.

Mr. Chairman, there are many areas we have not touched in detail. One of them is the question of professionals and supervisors in a labor-management statute.

In your opinion, should provisions be added to the bills to provide for recognition of separate unions for supervisors?

Mr. HAMPTON. I don't think so.

Mr. MESKER. What about the treatment of professionals? Under H.R. 10700, as it's drafted, it would permit an agency to discuss with organizations, veterans groups, professionals, and others, matters of interest to the members as long as those discussions did not intrude upon bargaining rights.

I know in your FLRC hearings there's been a considerable amount of discussion on the role of professionals. Do you think, for example, in the way the bill is written now, that such discussion should be optional with the agency, or should they be mandatory? What should be the role in dealing with these groups?

Mr. HAMPTON. Well, I think it's a very sensitive problem because you have a number of professionals that are included in bargaining units and it all depends upon the way the professional organizations also view themselves.

Many of the issues the professional organizations are interested in are those items that are covered in the labor relations situation, and management could be cited for unfair labor practice if they dealt with such organizations when they have an exclusive unit that is made up of professionals in that unit. So it's the way they view themselves.

We're trying to look at this and it's part of something that we'll take up as soon as we have the time in which to deal with it. Right now we're involved more in the question of the review, but I'm not sure that you want to spell out in the statute some of these things in view of the conflict that is presented so often between professionals and others in the union.

Tony may have much more insight into the details of this and may want to elaborate on the matter.

Mr. INGRASSIA. Just briefly. I think the treatment in the Executive order which is reflected in H.R. 10700 is the appropriate way for dealing with the professional organizations that seek to represent their members on personnel policies, practices, and working conditions. If they seek that role, then they should be treated and meet the same requirements that a union must meet, and if they want to deal in purely professional matters, then management should be able to deal with them in concerns of their members without committing an unfair labor practice.

I think a perfect example that comes from my own background where I used to represent the American Newspaper Guild and there, of course, I represented employees as a union representative. I also was an officer of Sigma Delta Chi, which was the national journalism fraternity, the professional society.

Now, as an officer of the Sigma Delta Chi, I made no attempt, nor would management have ever permitted me, to deal on wages, hours, and working conditions of employees of various newspapers; and when those differences are understood we have very little problem with the interaction of professional organizations and unions. When they're not understood and where an organization wants to deal on wages, hours, and working conditions, personnel policies, but not meet the requirement of recognition or the proper running of the organization, of the nonsponsorship and control by management, then they have to deal in the other areas.

Mr. MESKER. One other area that takes a great deal of time to go into but maybe we can open it up this morning is the question of coverage of individuals, organizations, parts of organizations or, I guess more importantly, we could phrase it as exclusions.

Page 4, H.R. 10700 provides a procedure for an agency head with the approval of the central authority, to exclude certain organizations from the bill's coverage. What are your views about the establishment of a similar procedure in the bill for any agency or group of employees to be excluded from coverage by using this procedure instead of the specific exclusions that are currently included in the bill to cover certain agencies and groups of employees.

Mr. HAMPTON. I think on exclusions. I think the Congress should legislate on who is really excluded rather than resorting to an administrative procedure to do that, because I think there are some very significant exclusions that you should consider.



Mr. MESKER. Then, in addition to general exclusions, you would not object to a procedure in H.R. 10700 which provides that the head of an agency can recommend exclusion of certain groups but only with the approval of the central authority.

Mr. HAMPTON. I think that appears to be appropriate because you're dealing with a unit within an agency that isn't excluded overall by statute. Like the question of whether the CIA or the FBI—I think that's a public policy issue that Congress, if they legislate in this area, should face.

Mr. INGRASSIA. That's an issue that, while it's an issue of concern perhaps from an academic point of view, has not been a real issue in the program. The current Executive order permits the head of an agency to exclude from coverage certain parts of the agency that are involved in internal investigative work and auditing work and that is subject to review by the assistant secretary and the council as to whether that action was arbitrary and capricious.

H.R. 10700, in the first instance, would require approval by the central authority and, as the chairman points out, it presents no big problem. But, of course, it has not resulted in a problem in 4 years under the Executive order. There's been very limited exclusions. There's only been one time where a charge has been made that it was an arbitrary exclusion and that went through the machinery. So it has not presented itself as a real problem.

Mr. MESKER. To return to the subject of the Labor Board, accepting the fact that we have heard the Commission's objections to the Labor Relations Board which will be negotiating regulations issued by an agency which affect more than one agency, for example, the Civil Service Commission.

Under H.R. 10700, the choice of the members of the Federal Labor Relations Board from among management officials is based on the number of employees in a particular agency who are under exclusive recognition.

However, the Board would consider regulations governing all employees, and I think you recognized this point. Would it be practical for us to base the management representation on the basis of the total number of employees in the agencies rather than the other procedure?

Mr. HAMPTON. Well, I don't really know how it would come out, the mathematics of that.

Mr. MESKER. I was thinking in terms of who is negotiating and is it representative negotiation.

Mr. HAMPTON. Well, I would think that in all probability those agencies that are large and represent 90 percent of the employees—I mean, have 90 percent of the employees, would also be the same ones that would have the largest number covered by exclusions. I'm not sure of that statistically. I don't know how it would prove out. I don't think if we ever went that far that that would be a great problem.

Mr. MESKER. You don't think that would necessarily improve the acceptability of the Board itself in terms of our current discussion?

Mr. HAMPTON. I don't think so. Tony, can you think of any?

Mr. INGRASSIA. No. You know, the way you choose the agency representatives is not the problem that's presented by the Federal Labor

Relations Board. The problem would be how the machinery would function, the fact that each issue is taken up as if it's an individual grievance rather than the normal structure of bargaining where you deal with issues in totality and where priorities can be determined and trade-offs can be made—what is more important today—and instead, each one is dealt with on the merits of its own issue.

These are the matters that would be of concern, and the matter of union involvement and agency involvement in decisions that then would not just apply to the bargaining units but as we read the bill would apply to people outside the bargaining units; and their management would not be in a position to determine the policies that affect management representatives.

For an example, the Fair Labor Standards Act has just been passed and the Commission must implement and enforce that. Under that provision of H.R. 10700, we could not issue implementing instructions to put that law into effect without going through that board. Yet the Department of Labor which has the same authority to administer insofar as State and local employees and private sector employees, is not required to bargain in the same way before it issues its own implementing regulations.

Mr. HAMPTON. Another thing is that the three Civil Service Commissioners would have no say about what is implemented.

Mr. HENDERSON. Would you say in connection with Commission regulations to implement law that the procedure should not be followed?

Mr. INGRASSIA. That certainly would be a narrowing through, but there's very little that we issue that doesn't flow from a law that we have to administer.

Mr. MESKER. Could we go back to the board in that context and maybe you could give us your experience and a comparison on a projection basis in looking at H.R. 10700. In effect, the Labor Relations Board in negotiating regulations versus consultation at the present time could be a very similar operation. Granted, that PRAC coming from statute on blue-collar employees has certain limitations, there you are consulting with employee organizations who do not necessarily represent all of the employees.

What would be the difference in a negotiation procedure set up under the Labor Relations Board and consultation that doesn't necessarily represent all of the employees? Based on that experience, could you draw any comparisons?

Mr. HAMPTON. Well, the Prevailing Rate Advisory Committee is dealing with, in a sense, broader issues on one narrow area and that's blue-collar pay and the conditions, like hazard pay and certain other utilization of certain skills. There's a very pragmatic limitation there, too, in the law. The law says that you will go out and get prevailing rates and application and that sort of thing. Here, then you'd lose all similarity. The structure appears to be similar but in the impact it's significantly different in that the issues that would be before this board are matters of major policy concern that the Chief Executive, the President of the United States, may have a point of view or the Office of Management and Budget or the three Civil Service Commissioners. There is no input of those into the

consideration of the matters before this board and so I think impact and scope is a significant difference.

Tony's examined this a lot closer and we haven't discussed all of the implications but he may have something to add.

Mr. INGRASSIA. Just two brief points. The two major differences between the two boards, in addition to what the chairman has commented on, under PRAC, the decisions of that board are advisory to the three Civil Service Commissioners. Under the Federal Labor Relations Board, as envisioned in the bill, it's final action.

Secondly, the actions taken by the Prevailing Rate Advisory Committee deal with the advice affecting employees that would be eligible for bargaining units. In other words, the rank and file employees. And while the conditions in the regulations that go out may often be the same, nevertheless, the Commission is not bound insofar as it would apply to supervisors, for example, as it would be in a decision made by the Federal Labor Relations Board.

Mr. MESKER. Why is it that the five management members of the Board who are somewhere in the chain of command from the chief executive down, plus the Commission-appointed Chairman, could not represent management's interest on the basic issues that are before the Board?

Mr. HAMPTON. Well, I would think that if you would think in those terms that you would have five agency heads on the Board. I don't think that would be practicable.

Mr. MESKER. I'm sure that they would caucus, as any bargaining parties do.

Mr. HAMPTON. Yes. They caucus now in the Prevailing Rate Advisory Committee, but I'm not sure that you will get the breadth of the overall picture of the operations of the Federal Government. An agency is more or less thinking in terms of that agency. He's not thinking in terms of the agency as it relates to the total Federal Government.

There are only two central agencies of government who do that, and that's the Office of Management and Budget and the Civil Service Commission. Those are the principal central agencies of the Government, other than GSA which is not as involved in these matters.

So I think that would be a deficiency of input because I may view a personnel management issue quite differently than someone who is, say, with the Air Force or the Veterans Administration or HEW, because from my vantage point I see how this impacts on the Government as a whole and not just on one particular agency. Although their input and so forth is valuable, there are considerable variations.

I think, too, the labor-management relationship is essentially one between the employer and the employee, and that we should strive in any legislation to foster that kind of relationship, even though it may involve 70 agencies, up to a point. In other words, I don't think there's any escaping the fact that we have a tier system in the Government and that any bilateral situation must recognize the limitations of that tier.

Now what you're really trying to do is to get at the top tier because I think it is helpful to have local union-management relationships. I don't think we should do anything to destroy that. It has

great benefits. It's taken 12 years for the management of Federal agencies to begin to recognize that it is good business for them to deal directly with their own employees. So let's let them do everything that they possibly can within the scope of that authority.

Then you get to the second tier and this is the question of agency regulations. The question is: Are those agency regulations overly prescriptive in that they take things off the bargaining table at the local level without any real consideration, is this an equity issue that it is essential to deal with at, say, agency headquarters level?

Now that's one way we can enrich the bargaining where it should take place and that is directly between the employer and the employee.

Mr. HENDERSON. Mr. Chairman, didn't the Commission recently direct the agencies to review their regulations to try to make them less restrictive and to put more matters back on the bargaining table?

Mr. HAMPTON. Yes, we did, and we also reviewed our own Federal Personnel Manual to see if the regulations of the Commission were overly prescriptive. So matters that were even covered at the Commission level would then be picked up.

Now if the agencies view our loosening up on the Federal Personnel Manual as a signal for them to regulate in this area, then it defeats the purposes of our actions. Now one of the items that we're reviewing in the present review at the Council is some mechanism whereby if it is contended by the unions that agency regulations are overly prescriptive, that they can get an answer to this question and thus here again enhance the bargaining relationship at the local level. So we're doing something right now to get at the second tier.

Now the third tier is the one that I think you're interested in getting at, and that is the regulations that are issued by the Civil Service Commission which may have a tendency to take things off the bargaining table. At the same time, most of the rules and regulations that we issue are covered by a statute which under 10700 still does not change the statutes, and then you set up this Board that is going to supposedly bargain on these issues.

Well, I'm not sure and I'm not ready to commit myself to thinking as to really does this accomplish in an orderly way what you want it to accomplish, which we would agree with you is a good thing to accomplish; but does this do it? And does it do it in a way that it reduces the input of the President of the United States through his central authorities because the Civil Service Commission, despite what everyone says, in our basic statute, it says we will assist the President and all of our authority essentially flows from that.

So while I would object to this kind of body because it tends to distort that, somewhere, someday, somebody is going to have to represent top central management of the executive branch. I mean, I don't know how we get at this. Our way that we have gotten at it, Mr. Chairman, is to extend consultation, which we didn't have to do and which no one really appreciates the fact that we did because they don't win 100 percent of the time, but even in a collective bargaining situation you don't win 100 percent of the time either. So it's one of the things that when we do give, that local union leader sitting out there can't go to his membership and say, "Hey, look what we got."

Mr. HENDERSON. Let me touch on an earlier point you made with regards to the desires of the labor organizations to get into court. How would you suggest we meet that objective without trying to set up some formal procedures?

I was interested in your comment there; you were not suggesting we might give greater freedom to the labor organizations to go to court on these matters as a simple solution, were you?

Mr. HAMPTON. Well, I was just saying that is one of the points. I think one of the critical points a lot of the unions have expressed informally is this question of judicial review. It's not anything that is unique to the personnel business of the Federal Government because there is judicial review of most of the decisions made that are as a matter of law, and the only limitation on that is the exhaustion of the administrative remedies.

Now if you have a labor relations system, after the exhaustion of those remedies they can go to court. I think what you have to examine here, though, is what is it that they want to get into court under the question of individual rights. Under the Equal Employment Opportunity Act that was extended by statute, people who have discrimination complaints do have the right of judicial review. In the appeals setup under the Veterans Preference Act that is subject to judicial review, but it is limited in the case of the exercise of individual rights.

Now when you get into some of the complex issues of collective rights and say an unfair labor practice or a unit determination or a negotiability issue, then you're putting into the courts issues that transcend individual rights and questions of equity that are very complex and require an understanding of organizations. The Congress, if it would consider this question of judicial review—say, in other words, that this committee determines that we need a transition period; that in order to get to what you would think would be an excellent labor relations program statute but you don't feel comfortable in just doing it in one fell swoop, that what you might want to do is go to the question of the "make-whole" legislation and some kind of judicial review. But I think you would have to ascertain what is it that you want reviewable by the judiciary. Is this a limited review or is it all out?

I don't know the answer. I don't even pretend to know it. But I think in the courts, in terms of reviews of private sector labor decisions, there's a limited review by the courts. It isn't a total review. I think the court has set standards, for instance, on reviewing an arbitrator's award. We use similar standards in the Federal Labor Relations Council. I think that the courts have limited the review of NLRB decisions.

Tony is more expert on all this than I. Tony, can you think of any other thing in terms of judicial review? There are some limitations.

Mr. INGRASSIA. Certainly in the private sector, but I think you covered it very well. Getting back to Chairman Henderson's comment in the question, I don't think the chairman was intending in any way to leave the impression that he was advocating a bill that would turn the Executive order over to judicial review and I think that should be clarified.

Mr. HENDERSON. Well, that's a point I guess I was really making.

Mr. MESKER. Another aspect is the GAO position and their responsibilities and how that can be spoken to in any statute and how they make decisions on certain fiscal matters. Thank you for your comments on the Labor Relations Board. I think it's probably safe to say that we would both agree that the provisions in H.R. 10700 providing for negotiation at the Civil Service Commission and agency levels would tend to discourage regulations being issued by agencies and the Commission.

Mr. HENDERSON. Well, I have no problem in getting it, but I will ask unanimous consent that the record be held open. Certainly, any comments that you would like to submit for the record, feel free to do so. There may be questions as our staff reviews our two days of testimony and responses. There will be further questions for clarification you might want in the record. The staff will work that out.

[See p. 493 for material furnished.]

Thank you very much. I think it's been a very helpful and very fruitful opening of these hearings.

Mr. HAMPTON. Thank you.

[Whereupon at 12:20 p.m., the hearing was adjourned.]

## FEDERAL SERVICE LABOR-MANAGEMENT LEGISLATION

WEDNESDAY, JUNE 5, 1974

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met at 9:40 a.m., in room 210, Cannon House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order.

Today the Subcommittee on Manpower and Civil Service is continuing hearings on legislation to cover labor-management relations in the Federal service. It's been a long-standing policy of the Government since the 1930's that employees in the private sector have a right to be represented by labor organizations to bargain with its employers on wages, hours, and working conditions.

Congress has extended this same concept to employees of the Postal Service in the passage of the Postal Reorganization Act in 1970. At the close of 1973 nearly 1.1 million civilian employees of the executive agencies of the Federal Government were represented by labor organizations. This has come about during the past 12 years largely as a result of the relationship established by Executive order.

Because of the experience gained by both Federal agencies and the labor organizations representatives during this period and the viability of those relationships, I now believe that it's fitting that legislation be enacted. This legislation will place the two parties on an equal footing when dealing with each other both at the negotiating table and when appearing before third parties envisioned by the bills before us.

I believe it's also important that employees and their representatives have access to the judicial process when they have exhausted the administrative remedies established by law. Access to courts is rather tenuous under Executive orders.

It's now timely I think to consider legislation that will permit Federal employees to join the great majority of the American workers both in industry and in the Postal Service in the enjoyment of the well earned rights under a Federal service labor-management act.

However, I believe that matters affecting the pay rates, entitlement benefits, health insurance should be retained by the Congress, at least in the immediate foreseeable future.

There are several bills introduced on this legislation and one of the chief sponsors, Mr. Brasco of New York, certainly has long demon-

strated his interest both by the introduction of his bill and by attendance at these hearings, but today found it is necessary to be in his district in New York. He sent me word on this and asked that I explain his absence and express his regrets and certainly I'm sure Mr. Brasco will attend the future sessions to the best of his ability and will contribute much to the resolution of the problem.

I understand that the other members of the subcommittee are making efforts to be here and I'm very appreciative of Mr. Clay's attendance early this morning so that the meeting might get started.

Our witnesses today are Mr. Ken Meiklejohn, on behalf of Mr. Bie-miller, Director, Department of Legislation, AFL-CIO; Mr. Clyde Webber, president of the American Federation of Government Employees; Mr. Paul J. Burnsky, president of the Metal Trades Department, AFL-CIO; and Mr. John A. McCart, Operations Director, Government Employees Council; and will testify in that order.

Mr. Meiklejohn, I understand that there are others with all of you. I would request that you introduce your associates in the Department of Legislation of the AFL-CIO, and I will ask Mr. Webber and the other witnesses to do the same at the time they testify.

It's my pleasure to welcome you this morning and you might begin your testimony in any manner that you would like.

#### STATEMENT OF KENNETH A. MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE, AFL-CIO

Mr. MEIKLEJOHN. Thank you very much, Mr. Chairman, Mr. Bie-miller had hoped to be here this morning and he asked me to express his regrets he is not able to do so. I will read his statement but I will be available for any questions if any of the members of the committee have any questions.

Let me identify myself. I am Kenneth Meiklejohn, legislative representative of the AFL-CIO. I think it would be just as well if the representatives of each of the groups identify the people who are with them and we will leave that to them if that's all right with you.

Mr. HENDERSON. Very good.

Mr. MEIKLEJOHN. Mr. Chairman, the American Federation of Labor and Congress of Industrial Organizations appreciates very much this opportunity to present our views on legislation to place the Federal labor-management relations program on a statutory foundation.

Three bills are before this committee: H.R. 10700, introduced by the chairman of the subcommittee, Congressman Henderson, for himself and the committee chairman, Congressman Dulski; H.R. 13, introduced by Congressman Brasco, the bill which we support; and H.R. 9784, introduced by Congressman William D. Ford. Each of these bills is designed to place on a statutory foundation a system of labor-management relations in the Federal service generally similar to that which applies in the private economic sector under the National Labor Relations Act, as amended. A similar system of labor-management relations based on union recognition and collective bargaining already exists for employees of the U.S. Postal Service pursuant to the Postal Reorganization Act of August 12, 1970.

The system of labor-management relations in the Federal service called for in each of the bills that are the subjects of these hearings



also resembles in many respects the Executive order system that has been in operation in the Federal Government since January 1962 when Executive Order 10988 was issued by President John F. Kennedy. Union recognition and collective bargaining as established under that order, and its successors, Executive Orders 11491 and 11616, have since become an integral part of relations between Federal Government employees and their unions, on the one hand, and Federal agency management, on the other.

Indeed, I think by now we can all agree that union organization and collective bargaining in the Federal service is no longer a matter of controversy. The issue before the committee in its present hearings is simply whether Federal employees are to have a legislated system, with the administration and rules of the program laid down by the Congress, or an Executive order system, subject to amendment or revocation by the executive; whether the program is to be administered by an impartial outside board or by Government management and personnel officials.

In 1967, in testimony before the Cabinet-level Committee appointed by President Lyndon B. Johnson to review the then 5-year experience with Executive Order 10988, president George Meany of the AFL-CIO made some observations concerning the Federal labor-management program which I believe the committee will find informative in connection with the legislation now before them. I would like to quote briefly some of the things president Meany had to say on that occasion. He said:

We find general agreement that the Executive Order of President Kennedy to provide for employee-management cooperation in the federal service has brought significant improvements in labor-management relations within the federal government.

"For the first time, bilateral collective bargaining has become the recognized way to determine issues regarding personnel policies that affect the working conditions of federal employees. Although there are still considerable differences from collective bargaining in private industry, unions in the federal service have gained the right to bargain collectively with management on a variety of issues, including grievance procedures and arbitration.

"Nevertheless, in spite of this progress, government employees—union members and non-union members alike—are dissatisfied and restless.

"The AFL-CIO believes that in the light of past experience with collective bargaining under the Executive Order, the scope of collective bargaining must be enlarged, more effective machinery must be developed to break negotiation impasses, the grievance and arbitration procedure must become more meaningful and an impartial government board must be established to deal with unfair labor practice charges and to supervise the administration of the Executive Order."

Parenthetically, I might note that in reading that it seems to me that we have not done all that much since 1967 in this field because all of these are still the same problems.

Basically, these observations of President Meany are as applicable with respect to the Government's labor-management relations program today as they were in 1967. Some improvements have undoubtedly been brought about in procedures and operations, and the system as a whole has been strengthened under Executive Orders 11491 and 11616. It is also true that the number of nonpostal Federal employees now represented by unions with exclusive recognition rights has increased from 630,000 in 1967 to some 1,100,000 in 1973, and during this same period the number of agreements has grown from 650 to 1,904. How-

ever, the rate of increase has slowed markedly in the last year, and discouragement and frustration have continued among Federal employees and their unions in attempting to advance their interests under the order.

The AFL-CIO and its Government employee unions want to see established principles and procedures of labor-management relations that will assure Federal employees basically the same recognition and collective bargaining rights that most other employees in the United States already enjoy. This has been against the background of the fact that, except for State and local government employees—though by no means all of them—and farmworkers, only Federal employees are still denied protection by statutory law of their right to organize into unions of their own choosing and to bargain collectively for their own interest and welfare.

This activity has proceeded in two forums—first, within the executive branch of the Government in the development and implementation of principles and procedures to bring the Executive order system into line as closely as possible with those of true union recognition and collective bargaining, and second, in the Halls of Congress to place such principles and procedures on a statutory foundation. The AFL-CIO unions having members employed in the Federal service have worked cooperatively with the Government throughout the history of the Executive order system to make this system function fairly and effectively.

Although much thought and effort have gone into accomplishing this objective, the lack of impartiality in administration of the Executive orders and the absence of standards and requirements which agency heads and representatives, as well as unions and their representatives, must comply with have proved to be insurmountable obstacles. We have experienced, and we continue to experience, lack of uniformity in administration of the program in the various Federal agencies and persistent frustration on the part of employees and their unions in their efforts to secure and exercise the rights supposedly guaranteed them by the order.

We believe this is inherent in the present Executive order system, administered as it is by management itself.

Mr. Chairman, as you know, the Federal Labor Relations Council during the past 6 months has been engaged in a general review of Executive Order 11491. To the extent that we have been able to do so within the procedures and methods of review adopted by the Council, the AFL-CIO has been endeavoring to cooperate with the Council in this review. I would like at this point to offer and request inclusion in the record of the committee's hearings—and I will have to submit this to the committee at a later date since I find I didn't bring them with me—a copy of a letter and comments, dated February 20, 1974, submitted to the Council by the AFL-CIO and its affiliated unions having members employed in the Federal service.

The comments contained in these documents dealt with areas the Council stated "should be the central focus" of the review as determined by the Council. Many of these subject areas are the same or similar to issues the committee will have to consider in developing legislation following these hearings. We believe our letter and comments will provide a useful basis for judging the complacent sup-

port, of existing Executive order procedures which Chairman Robert E. Hampton of the Civil Service Commission, who is also Chairman of the Federal Labor Relations Council, presented to the committee during his appearance on May 21 and 22. As I say, Mr. Chairman, I would like to ask that this be included in the record as part of our testimony.

Mr. HENDERSON. Without objection, the letter and the material to which you refer will be placed in the record at the end of your testimony.

Mr. MEIKLEJOHN. Chairman Hampton came before the committee with voluminous material to support his contention that there is "no documented need for the substantial changes embodied in the statutory approaches pending before this committee." The comments made in our letter and memorandum last February provide the rationale, based upon experience in attempting to function under the Executive order system, for our firm conviction that a legislated collective bargaining system must now replace the Executive order system.

One of the principal reasons why we believe legislation is needed is that we have serious doubts that the Federal Labor Relations Council, as presently constituted, can successfully implement or review objectively a system of labor-management relations in the Federal Government based on union recognition and collective bargaining. Who is it that makes up the membership of the Council? It is the Chairman of the Civil Service Commission, the Director of the Office of Management and Budget and the Secretary of Labor. While the Council's administrative and review functions are spelled out in the Executive order, we question seriously its capacity to administer or review the operation of the order with the objectivity and impartiality required to deal effectively with the problems or define fairly the issues to be considered in the course of its administration or review. Without prejudice for or against any of the individual Federal officials who presently serve as members of the Council, we believe that the administration of the order and review of its operation by the Council as presently constituted is necessarily and inherently limited and biased in favor of management's point of view.

As we see it, this has two unfortunate consequences. On the one hand it has led to attempts to divert attention from efforts to secure from Congress legislation to remedy the weakness and arbitrariness which have long characterized the Federal labor-management program. As we pointed out to the Council in our submission last December listing issues we thought should be considered in its review of the present Executive order, it is not mere coincidence that the announcement of the Council's review came at a time when more and more public distrust was being articulated against both the procedural framework of the program and concerning decisions being issued under the program. Nor is it mere coincidence that the Council only within recent months began to issue decisions in cases that had been backed up for months and, in some cases for years. It's also not mere coincidence, we think, that this review comes at a time when Congress is beginning actively to consider legislation in this field.

While the role of union organization and collective bargaining has increased substantially under the Executive order, even more significant have been—the recent dramatic increases in unfair labor practice

complaints before the Assistant Secretary of Labor, in appeals to the Council, and in the filing of grievance and arbitration cases. These statistics do not necessarily evidence the present system is working or that the system enjoys the trust and confidence of employees. We believe they indicate that relations between management and employees have been worsening because true and meaningful participation by employees in the bargaining process has not been accomplished. Based upon their day-to-day dealings with Federal management and their daily contacts with their members, our unions tell us, they do not believe the Council has a finger on the pulse of Federal labor-management relations.

The second unfortunate consequence of the management-oriented conduct of the present Executive order program is the failure of the Council to appreciate the importance of recognizing and attempting to remedy some of the irritating and frustrating problems that have arisen in the administration of the program. For example, it is particularly important, we believe, to eliminate the unnecessary and provocative safeguards of management rights. These are implicit in the employment relationship, are founded firmly in statute, and need not be specifically spelled out in the order as at present. The purpose of the order is to assert and maintain the organization and collective-bargaining rights of labor, both those of employees and those of the unions that represent them, which are not yet established by statute.

The format of the Council's present review also reflects the management orientation of its attitude toward administration and review of the Executive order. Instead of providing an opportunity for free presentation of analysis and recommendations by interested parties as in prior reviews and revisions of the order, the Council sought listings of "issues for consideration," selection therefrom by the Council of the issues they would consider, and finally a hearing "to seek amplification of written submissions and to pursue proposals included in the written submissions."

We found this a particularly unrewarding format for review. It provided no opportunity for joinder of issues which might have been illuminating for both the Council and interested parties. The statements of issues and subsequent substantive position papers tended to force the parties to concentrate on special problems. The overall improvement of the Executive order in terms of its contribution, if any, to stable and constructive labor-management relations in the Federal service was lost sight of in a forest of particular problems of particular agencies in particular places and at particular times. The hearing which resulted based on our experience must have provided little new enlightenment of any significant value to the Council.

The issue selections made by the Council omitted a number of issues which we felt should have been included for consideration, such as (1) the question of "make whole" remedies; (2) inclusion of job classification within the scope of negotiation and grievance procedures; (3) use of arbitration in agency adverse action appeals; (4) a system of union security or representation fees; (5) elimination of interference by the General Accounting Office in the implementation of remedies ordered by arbitrators, the Assistant Secretary of Labor, or the Federal Labor Relations Council; (6) and strengthened reme-

dies in connection with unfair labor practices and enforcement of arbitration awards.

Unfortunately, we can expect little relief with respect to these matters under the present Executive order labor-management relations system. The Council asserts that existing law and regulations preclude dealing with most of them and that new legislation would be necessary to do so.

But if legislation is necessary, why should it not be sought by the Council? We feel it is incumbent on the Council, if it wishes to improve the operation of the Executive order system significantly, to propose and work for such legislation. The AFL-CIO has indicated its support for, and would cooperate with the Council in obtaining enactment of the necessary bills. We would, of course, welcome the administration's support, and particularly that of the Council, for legislation to provide a statutory underpinning which we believe is clearly necessary for a truly effective Federal service labor-management relations program.

I should like to turn now to a discussion of the three bills that are before the committee. Each of these bills would establish by law the right of Federal employees to join unions of their own choosing and to engage in collective bargaining with the agencies by which they are employed through their union representatives. Each would set up an authority or board to certify bargaining representatives, to prevent unfair labor practices by agencies or unions, to provide machinery and rules for settling bargaining impasses and to establish independent arbitration procedures to deal with grievances. The authority or board would function generally in the manner of the National Labor Relations Board, although its impasse and arbitration roles would give it a substantially broader jurisdiction than that board has under the National Labor Relations Act.

The AFL-CIO and its interested unions have given careful consideration to all of the bills that are before the committee. We believe that there are features in each one of them which should receive careful study by the committee. As I pointed out at the beginning of my statement, we prefer H.R. 13, the bill introduced by Congressman Brasco. This bill was the subject of lengthy discussion among the representatives of our unions. In the form in which it is before the committee at this time, it has the united support of all our interested unions. This does not mean that there are not features of H.R. 10700, Chairman Henderson's bill, and H.R. 9784, Congressman Ford's bill, that might well be included in H.R. 13 when it is reported by the committee. We appreciate very much the interest of all three sponsors of these measures, and particularly that of you, Chairman Henderson, in scheduling these hearings.

I am not going to discuss in detail at this time any of the three bills. Many of the issues discussed by Chairman Hampton of the Civil Service Commission were dealt with in the letter and memorandum submitted for inclusion in the record earlier in this statement and will be discussed in the statements of the union representatives who will follow me. Our affiliates in the Federal Government field have had the experience of operating under the present and past Executive orders. It is they who can be most helpful to the committee in informing them

of the problems they have encountered in attempting to function effectively under the Executive order system and the reasons for believing that this system must now be replaced with a statutory system.

The committee is aware, I am sure, that there are substantial segments of Government service that already enjoy the benefits of union recognition and collective bargaining. Long before Executive Order 10988 was issued by President John F. Kennedy, systems of union recognition and collective bargaining were successfully operating in the Tennessee Valley Authority and certain units of the Department of the Interior. Under the Kiess Act employees of the Government Printing Office have enjoyed some measure of participation in the setting of wages in that Agency. In 1970, when Congress had occasion to consider, and acted to recognize, the U.S. Post Office Department, one of the most important aspects of that reorganization was to institute a genuine system of collective bargaining administered by the National Labor Relations Board. So far as we know, that system is functioning effectively and in the public interest in the U.S. Postal Service today.

H.R. 13 would establish a Federal Labor Relations Authority. This Authority would be composed of a chairman and two additional members appointed by the President, with the advice and consent of the Senate, from a list of 10 persons submitted to the President by the American Arbitration Association. The powers and duties of the Authority would include unit determinations, certifications of bargaining representatives, prevention of unfair labor practices, and decision of negotiation impasses.

In considering the type of agency that should be assigned the responsibility of administering the substantive provisions included in the law, we have given considerable attention to the question whether this should be a separate authority or whether the existing National Labor Relations Board should be assigned this duty as under the Postal Reorganization Act of 1970. We support the idea of a separate board for the reason that the National Labor Relations Board's existing jurisdiction is already very broad and the problem of delay, which already is serious in the administration of the present Executive order program, might well be accentuated across the whole scope of the labor-management field. The special character of government employment indicates a separate authority is needed which would more readily develop the expertise for dealing with the problems coming under its jurisdiction.

Such an authority would be established by all three bills before the committee. H.R. 10700, however, provides for an additional bipartisan Board appointed by the Chairman of the Civil Service Commission to consider policies and regulations involving "matters subject to negotiation" encompassing "personnel policies and practices and matters affecting working conditions" which the Commission or any other agency, except the Department of Defense, proposes to issue.

The Board would be composed of a Chairman, without vote except to break ties, five members from among management officials of Government agencies, and five members from unions holding exclusive recognition rights. This bill also spells out many matters that may not be made the subjects of negotiation or bargaining, such as the mission, organization or budget of an agency, the number of employees, the

number, types or grades of positions, internal security practices, and management rights in relation to employees. Under H.R. 10700, negotiability questions would be determined by the head of the agency, subject to appeal to the Federal Labor Relations Authority.

These provisions would result in a limited system of negotiation and bargaining basically similar to the procedures and rules that prevail at the present time under Executive Order 11491, as amended. Management control would continue to be maintained through the Board and the broad delineation of management rights contained in the bill. This is a basic defect, as we see it, in H.R. 10700 and requires us to oppose this bill in its present form despite the fact that in many respects its passage would institute a number of important improvements as compared with the existing Executive order system.

Both H.R. 13 and H.R. 9674 would be administered by an independent public authority or board appointed by the President, with the advice and consent of the Senate. They contain no such provisions limiting the scope of bargaining or protecting management prerogatives as are contained in H.R. 10700. Under these bills the collective bargaining system for which they provide would function in substantially the same manner as the U.S. Postal Service system and the private sector system administered by the National Labor Relations Board. In our view, these bills are definitely to be preferred over H.R. 10700.

H.R. 10700 provides that employees are guaranteed the right not to join, as well as the right to join a union. It further provides that an employee shall not be required to become or remain a union member, or to pay money to a union in lieu thereof, except as he may voluntarily authorize payment of dues through dues deductions. This bill would expressly forbid even the so-called "agency shop." H.R. 13 and H.R. 9784 provide that when a union has exclusive recognition rights, employees in the unit must either become members of the union and pay dues, or pay a "representation fee." Thus, while H.R. 10700 would in effect continue the limited union status that even exclusive recognition provides under Executive Order 11491, as amended, the other two bills would provide a measure of union security when the results of the union's organization and bargaining work have resulted in a collective bargaining agreement.

The subject of "union shop" or "agency shop" is one, of course, about which there is great controversy. It is also one about which there is great misinformation. The union shop, or agency shop, which unions representing employees in the Federal Government seek, is basically a means through which the union can bring about in the minds of the employees it represents a recognition that the gains they achieve through collective bargaining are the result of the union's work on their behalf. The union is required to represent all the employees in a unit, not just their own members, if it enjoys exclusive recognition. It seems to us it is entitled to all the employees' support, not just that of its members, for the work and activity it carries on in their behalf.

The support of employees in the unit, without reference to whether each one is or is not a member of the union, is important to provide the union some measure of security against the activity of employer or outside agents who might want to undermine or destroy its majority.

status. Unless such security is provided, the stability of the relationship between the union and the management is weakened, and a period of some turmoil within the unit can well ensue.

We believe that union security is in the interest, not only of the union, but of the nonmember and the agency itself as well. The record of constructive, stable relationships between labor and management where union security agreements are not forbidden by archaic open shop laws is persuasive evidence that the agency shop is not something to be feared, but rather something to be welcomed. Its enactment as a part of a labor-management relations law for the Federal service would put the Federal Government in the vanguard in this field where it belongs. We strongly urge that any bill reported by the committee include such a provision.

In the private sector the right to strike has been regarded as the basic requirement for assuring equality of bargaining power between labor and management. The AFL-CIO strongly affirms and supports the right to strike. The Tenth Constitutional Convention of the AFL-CIO last fall resolved:

That the AFL-CIO and its affiliated unions work diligently to repeal laws and ordinances that seek to prohibit public employees from exercising their right as workers to withhold their services, and to defeat future attempts to penalize public workers who choose to exercise the right to strike. We believe that the right to strike is basic to all American workers, public and private alike.

We recognize, however, that the committee may feel that in the public sector alternative means may be required to achieve the equality of bargaining power without which true collective bargaining is unachievable. Principally, we believe, these are to be found in the voluntary inclusion in agreements of commitments by the parties to submit issues, including grievances and disputes concerning the interpretation or application of the agreements, to final and binding arbitration when the parties are not able to resolve them through negotiation or collective bargaining. In this effort, obviously, the services of effective mediation and conciliation by the Federal and State mediation authorities can be of great assistance.

This is the method proposed in H.R. 13, the bill which we support—and I note that it's the bill that we generally support, but all this in this respect we believe it does not go as far as it should in connection with the right to strike.

By contrast, H.R. 10700 leaves the parties to depend on decisions of a management-appointed board. Under this bill the problem of inequality of bargaining power on behalf of the employees is resolved by perpetuating, rather than alleviating, this inequality.

H.R. 9784 purports to assert the right to strike, but provides that restraining orders or injunctions may be sought and granted on the basis of findings of fact by the appropriate United States District Court made after due notice and hearings that a strike would pose a clear and present danger to the public health or safety. Furthermore, if the union elects binding fact-finding during negotiation disputes the union would be prohibited from striking for the purpose of resolving the dispute. These provisions, it seems to us, give the right to strike with one hand, but take it away with the other. In our judgment, the better way is the way proposed in H.R. 13, the way of voluntary agreement on final and binding arbitration.



Obviously, there are many facets of the bills which are the subjects of this hearing which are of importance but which I have not been able within the time available to deal. Many of these matters will, of course, be discussed by the other union representatives appearing with me here today. I have tried to stress that the time for a legislated Federal labor-management relations system is now, and I have tried to put some of the basic questions the committee will have to consider in drafting legislation for this purpose in proper perspective and significance.

We strongly urge the committee to report favorably H.R. 13, with such amendments consistent with its basic purpose as the committee feels will make it the kind of bill it would like to see enacted into law. We will be glad to work with the committee and its staff in developing the bill into a measure that will assure Federal workers equal status in the labor-management field with all other workers and that will place the Government in firm support of the following principle and policy declared in this bill:

That participation of employees of the federal government through labor organizations of their own choosing in decisions which affect them contributes to the effective conduct of public business. Therefore, labor organizations and collective bargaining in the federal service are in the public interest.

Thank you very much, Mr. Chairman.

[The letter and attached material referred to are as follows:]

AMERICAN FEDERATION OF LABOR AND  
CONGRESS OF INDUSTRIAL ORGANIZATIONS,  
Washington, D.C., June 7, 1974.

HON. DAVID N. HENDERSON,  
*Chairman, Subcommittee on Manpower and Civil Service, Committee on Post  
Office and Civil Service, Rayburn House Office Building, Washington, D.C.*

DEAR CONGRESSMAN: You will recall that during the course of my testimony before the Subcommittee on Manpower and Civil Service on June 5, 1974, I requested that there be included in the record of your hearings on legislation to place the Federal sector labor-management relations program on a statutory foundation a copy of the comments and recommendations of the AFL-CIO and the covering letter, dated February 20, 1974, in connection with the current review of the Federal labor-management program pursuant to Executive Order 11491 being conducted by the Federal Labor Relations Council.

A copy of the letter in question from Andrew J. Biemiller, Director of the Department of Legislation, to Chairman Robert E. Hampton of the Federal Labor Relations Council, and the comments and recommendations of the AFL-CIO to which I referred are enclosed herewith. Thank you very much for including this material in the record as a part of our statement.

Sincerely yours,

KENNETH A. MEIKLEJOHN,  
*Legislative Representative.*

AMERICAN FEDERATION OF LABOR AND CONGRESS  
OF INDUSTRIAL ORGANIZATIONS,  
Washington, D.C., February 20, 1974.

MR. ROBERT E. HAMPTON,  
*Chairman, Federal Labor Relations Council,  
1900 E. Street, NW.,  
Washington, D.C.*

DEAR MR. HAMPTON: The AFL-CIO and affiliated unions having members employed in the Federal service have considered the announcement of the Federal Labor Relations Council concerning the areas which the Council stated "should

be the central focus" of its general review of the Federal sector labor-management relations program.

The areas listed by the Council in its Information Announcement of December 18, 1973, do not include all of the matters which the AFL-CIO and its affiliated unions believe should be included in the scope of the Federal Labor Relations Council's review of the operations of Executive Order No. 11491, as amended by Executive Order No. 11616. In this connection, the Council's announcement stated:

"A number of proposed items which were not selected would have required legislation. These have not been included because they are beyond the scope of the review of the Order. For example, a number of submissions suggested the question of 'make whole' remedies be included. Legislation would, of course, be required to effectuate such a change."

The Council's announcement of December 18, 1973 enumerated for similar exclusion several additional items which had been proposed by the AFL-CIO for consideration with the Council's review of the operation of the Order. These included items 8 and 12 of Section One and items 1, 3 and 11 of Section Two of the AFL-CIO submission.

In the view of AFL-CIO and its affiliated unions the issues raised by these items encompass many areas, some of which may be restricted by statute, some which are in no way affected by statutory provisions, and others which although related to statutory provisions, are not outside the FLRC's authority.

For example, we fail to see why legislation would be required to provide for direct enforcement of arbitration awards by the FLRC, as proposed in item 11 of Section Two of the AFL-CIO submission. Prior to their revision in 1972, the FLRC's own rules and regulations provided for enforcement of arbitration awards.<sup>1</sup> If the FLRC now believes legislation would be required, we believe it is incumbent upon them to give the rationale for its conclusion, including relevant citations and authorities.

We were also greatly concerned over the FLRC's statement that "Legislation would, of course, be required . . ." for make whole remedies. Specifically what "make whole" remedies are included in this statement? Reinstatement—with or without backpay? Retroactive promotions—with or without backpay? Gissell-type bargaining orders?<sup>2</sup> Any others? The FLRC has accepted two AFGE arbitration cases for review on precisely the issue of retroactive promotion with backpay. Are we to assume these cases have already been decided?

Another very significant issue raised in item 11 of Section Two is the relationship between union grievance procedure and other grievance or appeal procedures. The plethora of different procedures and forums which federal employees must cope with is a tremendous burden on labor organizations and federal employees. This multiplicity of forums is by no means required by statute.

We do not agree that legislation would be required in order to permit certain issues to be litigated pursuant to unfair labor practice proceedings or binding arbitration. Why would legislation be required to litigate adverse actions involving nonveterans under negotiated procedures? What is the FLRC's rationale for concluding that legislation would be required to make issues regarding performance ratings, reductions-in-force, salary retentions, EEO matters, separation of probationary employees, or withholding of step increases, subject to union grievance procedures? Specifically what statute or court decision precludes making these matters subject to the negotiated procedure in a manner consistent with the basic statutory rights of federal employees.<sup>3</sup>

We believe that where review of such important issues is denied on the basis of a need for legislation, it is incumbent upon the FLRC to state the specific areas which, in its view, would require legislation, and to give the supporting reasons for its conclusions, including relevant citations and authorities. In keeping with the Freedom of Information Act, 4 U.S.C., Sec. 552, agencies are expected to make available any opinions, policies, or interpretations upon which they rely,

<sup>1</sup> Compare, sec. 2411.20(a) of the FLRC's original Rules and Regulations with sec. 2411.37(h) of the current Rules and Regulations.

<sup>2</sup> The NLRB may require an employer to recognize a union without an election where it determines that the unfair labor practices committed by the employer during an organizing campaign would tend to undermine the union's maturity and make a fair election an unlikely possibility. See, *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), and related cases.

<sup>3</sup> See, for example, *Collins Insulated Wire*, 192 NLRB No. 150, and related cases, where the NLRB gives a broad delegation of its statutory responsibilities to arbitrators.

particularly where such reliance is to the detriment of the party requesting the information described above.

We also suggest that it serves little purpose to exclude items from consideration that require legislation if such matters materially and substantially affect the operation of the program. If legislation is needed to deal with such problems, then legislation should be obtained. If the area's problems are important and cannot be dealt with without legislation, then legislation should be sought by the administration to enable such problems to be dealt with. As you know, it has been our consistent view that a system of effective union recognition and collective bargaining in the Federal service cannot be achieved without the enactment of legislation placing such a system on a statutory foundation. We would invite the Council's cooperation in achieving any necessary legislation that may be required to establish such a system.

Enclosed herewith are our detailed comments on the various items listed by the Council in its Information Announcement of December 18, 1973. It is our understanding that hearings will be held by the Council at a future date on the areas for review listed in that announcement. The AFL-CIO and its affiliated unions would wish to be represented at any such hearings.

Sincerely yours,

ANDREW J. BIEMILLER,  
*Director, Department of Legislation.*

#### COMMENTS AND RECOMMENDATIONS OF THE AFL-CIO ON AREAS FOR REVIEW OF THE FEDERAL LABOR-MANAGEMENT PROGRAM PUR- SUANT TO EXECUTIVE ORDER 11491

##### AREAS DETERMINED BY THE FEDERAL LABOR RELATIONS COUNCIL TO BE THE CENTRAL FOCUS OF THE REVIEW

##### I. SPECIFIC CATEGORIES OF PEOPLE UNDER THE ORDER

##### *I. Should section 3 of the Order be amended to provide for additional exclusions?*

Executive Order 11491, hereafter referred to as the "Order", we believe, should not be amended to provide for additional exclusions. Instead, it should be amended to remove the present exclusions of FBI, CIA and the Foreign Service. (The principle which should apply is that all persons who appear on the published rosters of Federal agencies should be covered by Labor-Management Relations.) Specifically, Executive Order 11636, establishing "employee-management" relations for the Foreign Service should be revoked especially since this Service was originally included in Executive Order 10988 and Executive Order 11491. The Order should be deemed to cover all Federal employees, including Panama Canal Government and Company employees, in the Panama Canal Zone. The Zone is not a territory "outside the United States"; consequently, Federal employees there have a right to be covered just as any employee in any U.S. territory.

Section 3(c) should be amended to end the discretionary authority which agency heads have to suspend provisions of the Order. No reasonable basis exists to justify this provision of the Order, especially when Section 3(c) fails to provide standards for agency heads to apply when deciding whether to suspend the Order. Certainly, there is no rational basis for an agency head to deny arbitrarily coverage of employees under the Order on the basis of geography, e.g. the Army's exemption of the Panama Canal Zone Company/CZ Government under Section 3(c) of the Order.

Section 3(d)-type employees should only be excluded from a unit if they are effectively recommending the formulation or execution of agency labor relations for the unit in question.

Continuation of the present provisions of Section 3 arbitrarily denies excluded employees equal protection and equal rights.

Section 3 should, we urge, be modified to provide that, in the event no labor organization exists for representing Section 3 employees in an appropriate unit under the Order, the employee may designate any union of his choosing to represent the employee's interests under statute or regulations without reference

to the provisions of the Executive Order, except the general policy provisions of Section 1. Furthermore interpretations of Section 3 in its existing form, by the Federal Labor Relations Council, hereafter referred to as the "FLRC", should be made in accordance with established appeals procedures.

2. Should the Order be amended to include any additional definitions pertaining to inclusions and exclusions (e.g., management official, confidential employee, professional employee)?

Consistent with our answer to I.1., we believe there is no need for additional definitions regarding exclusions.

To clearly identify the rights of employees and labor unions and the matters with which they can deal through unions, we recommend that the following definition be included in the new Executive Order: "Employee" means an employee of an agency and an employee of a non-appropriated fund institution of the United States.

3. What should be the Executive Order policy with respect to guards? (See sections 2(d) and 10(b)(3).)

The definition and references of guards in sections 2(d) and 10(b)(3) should be deleted.

We believe the provision in E.O. 11491 relating to guards is a misconception of the role of guards in private enterprise as contradistinguished from their use in the Federal government. The Federal government has access to a whole series of protective services additional to guards, whereas private employers must rely on their own guards to protect premises or rely on protective services by hire or on public police forces. But U.S. can use FBI, Deputy Marshalls, Secret Service and host of other protective forces and in the final resort, the military without going outside its own jurisdiction. Its resources are all within the premises. Consequently, we believe that considerations valid for private enterprise are irrelevant and tangential in Federal service and are only harmful and confusing.

For this reason we call for removal of the prohibition against unions who represent non-guards from seeking new units of guards, as well as removal of the prohibition against such unions from appearing in representation proceedings, including placement on the ballot, in defense of established exclusively recognized units of guards and of mixed guards and non-guards.

Since currently there are criminal and civil sanctions for Federal employees who engage in strikes, Federal guards cannot anticipate being called upon to play a role in labor relations strife, especially in light of complete lack of such activity by guards throughout E.O. 10988 and E.O. 11491, as amended.

The Assistant Secretary's handling of carve-out elections involving units of both guards and non-guards should be changed to allow the incumbent union to appear on the ballot in contrast to NLRB procedure. (A/SIMR Nos. 45, 325, 326 and 333).

Present Assistant Secretary procedures put an incumbent union which represents a mixed unit or a pure guard unit at a disadvantage contrary to the Study Committee Report and Recommendations which provides at Page 39: "These requirements would not affect existing units of representation but should be applied in all unit representation determinations under the new Order."

The Assistant Secretary's handling of carve-outs or challenges to pure guard units is illogical because, on the one hand, it denies an incumbent a place on the ballot on the theory that guards may not be represented by a unit which includes guard employees, while on the other hand, allowing guard units to continue if the challenge unit fails to win the election.

4. What special policy, if any, should be established concerning the status of attorneys under the Executive Order?

There should not be any special policy regarding the status of attorneys under the Executive Order, or of any other professional. The relationship of attorneys to other employees in the Federal service does not per se create any conflict of interest. Other than clearly recognizable conflict-of-interest situation, which would apply to all employees, attorneys should receive no special treatment, regarding either inclusions or exclusions.

## II. SUPERVISORS

1. Should the definition of supervisors be modified? (See section 2(c).) If so, how?

Yes, we believe it is necessary to redefine supervisor in terms relevant to the Federal Service where so-called "supervisors" in fact do not have the same functions, powers or roles as "supervisors" do in private enterprise.

For this reason, we propose retaining all of the present definition of "supervisor" in Section 2(c), but adding to it also the following paragraph of two "presumptions" making the definition relevant to Federal Service:

"Provided, That all employees in civil service grade GS-10 and below shall be presumed not to be supervisors within the meaning of the Order.

"Provided further, That fire captains and fire prevention inspectors, shall not be considered to be supervisors within the meaning of the Order except where it is demonstrated that a preponderance of the duties they perform are within the scope of section 2(c)."

2. What provisions, if any, should the Order contain concerning associations of supervisors and management officials? (See section 7(e) and 21(b).)

Associations of supervisors and management officials should have no status under an executive order dealing with labor-management relations. The inclusion of such associations is a contradiction of fact, overlooking or ignoring the basis for the original exclusion of supervisors and managers on the basis of conflict of interest. This original exclusion is conceptually insurmountable. If individual managers and supervisors have any rights of association, it should not be within the context of the Order, which should deal only with the rights provided to labor unions.

For this reason, we recommend elimination of Section 7(e) of the Order.

3. What policy should pertain to the representation of supervisors by unions in proceedings under agency grievance and appeals procedures?

We believe the following policy should pertain:

A labor organization which holds bargaining rights and represents an appropriate unit of employees of an agency may, if requested by a supervisory employee who is a member of such labor organization and employed by the agency at the same activity, not in the recognized bargaining unit, represent such employee in proceedings under the agency grievance and appeals procedure; and such recognized labor organization may similarly represent in a grievance or appellate action any employee within the unit for which it holds exclusive recognition on any grievance or appellate action that is not subject to the negotiated grievance procedure of the labor organization's negotiated agreement.

## III. RECOGNITION PROCEDURES

1. Should the requirements in section 10(a) for a secret ballot election as a prerequisite to exclusive recognition in all cases be modified or retained?

Section 10 should be modified to allow certification on the basis of designated majority support, e.g., authorization cards. Such practice has worked well in the private sector and would promote efficiency for both unions and government agencies. There is no evidence whatsoever that this procedure was defective as utilized during the eight years of E.O. 10988.

Thus, we favor this item, and recommend that Section 10 of E.O. 11401 be modified by deleting the phrase "selected, in a secret ballot election" and substituting for it the phrase "designated or selected".

The revised section 10 would then read as follows:

"Section 10. *Exclusive recognition.* (a) an agency shall accord exclusive recognition to a labor organization when the organization has been designated or selected by a majority of the employees in an appropriate unit as their representative."

2. Should unions and agencies be permitted to consolidate bilaterally their existing units without meeting the requirement of a secret ballot election if the resulting unit is otherwise in conformity with the provisions of the Order?

Unions should be permitted without secret ballot to consolidate existing units unilaterally on the basis of certification as to appropriateness of the larger units. This should not require any action by agency management.

The present Assistant Secretary rule of certification and agreement bars preventing consolidation of units must be reversed because it means that the more employees a union represents in individual units, the more difficult it becomes for that union to acquire a showing of interest necessary for certification of a larger all-encompassing unit. Further, if such unit is deemed appropriate, unions should not be forced to lose already established smaller units because of the present Assistant Secretary's requirement of "putting them on the line" in an election. This is particularly valid when no other unions are involved.

Whenever a union wishes to merge its existing units into one larger consolidated bargaining unit, it should be allowed to do so without agency consent and without an election.

An election should not be necessary because a consolidation of existing units does not constitute an attempt to represent new employees. Rather, it is merely an effort to eliminate artificial unit lines which divide agency employees into fragmented units. Therefore, the employees of these units should be allowed to express their feelings regarding consolidation through their elected representatives without the necessity of a second election.

Agency approval should not be required for an appropriate unit consolidation because such consolidation merely seeks to join individual units, which have already been certified as appropriate, in order to attain more effective and efficient labor relations.

If, on the other hand, a union is seeking to consolidate its units with other unrepresented units or with units represented by other unions, then an election should be conducted to determine the wishes of all employees involved.

Agreement and certification bars, correctly understood, are intended to promote stable labor relations by providing some protection against the harassment of raiding units and should never be allowed to impede the consolidation of bargaining units. The present Assistant Secretary rule on unit consolidation (Veterans Administration and Council of AFGE VA Locals, A/SLMR No. 240, FLRC No. 73A-9) must be overturned because it punishes unions for their success in organizing employees and reaching collective bargaining agreements.

#### IV. CONSOLIDATION OF EXISTING UNITS

1. What should be the Executive Order policy with respect to the consolidation of bargaining units?
2. What changes in the Order or its implementation should be made for this purpose?

We believe the new Executive Order should clearly establish the principle of non-application of agreement and certification bars now in effect through various decisions of the Assistant Secretary of Labor, its petitions for exclusive recognition of nationwide units or "national exclusive recognition".

In this connection, attention is called to the last paragraph of Section B.6 of the Study Committee Report and Recommendations, dated August 1969, which reads as follows:

"When national exclusive recognition has been granted in an appropriate national unit, no recognition should be granted to any other labor organization for employers within the national exclusive unit. This does not preclude consultation or negotiation at any level with representatives of the nationally recognized exclusive union."

#### V. SCOPE OF NEGOTIATIONS

1. Should the Order be amended to delineate a recognized union's rights concerning agency regulations and the impact of such regulations on the scope of bargaining? If so, what changes should be made for this purpose?
2. Should sections 11(a), 11(b) and 12(b) be modified or revised or clarified? How?
3. Do the agency's obligations to negotiate, to consult and to meet and confer, especially with respect to midcontract changes in personnel policies and procedures, require clarification?

Our position on these issues includes three related recommendations:

(1) The Order should be amended to include a general list of representative items which are mandatory subjects of bargaining, irrespective of agency regulations.

(2) Sections 11 and 12 of the Order should be deleted and Section 10(e) expanded to define the continuing obligation to bargain in good faith.

(3) There should be no doubt that the obligation to bargain is a continuing obligation. It is a violation of Section 19(a) (6) to make a unilateral change in any contract item during the term of the contract. Even where a past practice is not specifically covered by a contract, management may not make a unilateral change in a past practice without first bargaining to impasse, including recourse to the Impasses Panel.

For purposes of convenience, we are presenting separate discussions of each recommendation. The recommendations are, however, interrelated and should not be viewed in isolation.

*Listing representative items as mandatory subjects of bargaining*

We recommend that the term "personnel policies and practices and matters affecting conditions of employment" (see our proposed amendment to Section 10(e), *infra*), be specifically defined by adding the following subsection to Section 2. *Definitions*:

"(j) 'Personnel policies and practices and matters affecting conditions of employment' means, but is not limited to, such matters as working conditions and environment, pay practices, fringe benefits, work hours and schedules, overtime, work procedures, automation, safety transfers, job classifications, details, promotion procedures, seniority, assignments and reassignments, reduction in force, job security, contracting out, use of military personnel, disciplinary actions and appeals, training, labor-management relationship, methods of adjusting grievances, granting of leave, union security, travel and per diem." [See Section 201 (1) of S. 351 or H.R. 13.]

At the present time, two entire sections of the Order are devoted to areas excluded from the duty to bargain, but there is no detailed listing of areas where management must bargain. Even the nine-word phrase "personnel policies and practices and matters affecting working conditions" in Section 11(a) is practically qualified out of existence and can, in fact, be regulated out of existence by an agency.<sup>1</sup> Surely unions should have certain areas clearly established so that we can avoid as much litigation as possible.

At the very minimum, the scope of negotiations should include any areas not specifically prohibited by statute. If an agency believes that circumstances peculiar to their operation warrant a different conclusion, this is properly an impasse question to be determined only after a factfinding hearing where all relevant factors can be evaluated.

*Elimination of sections 11 and 12 and expansion of section 10(e)<sup>2</sup>*

We recommend that the obligation to bargain be set forth in detail. This can be accomplished by expanding Section 10(e) to provide as follows:

"(e) When a labor organization has been certified as the exclusive representative of employees in an appropriate unit, it shall be entitled to represent and bargain collectively for all the interests of all such employees. Such labor organizations shall have the right to participate in the formulation, implementation, and modification of personnel policies and practices and all other matters affecting the conditions of employment of employees in the unit and shall be given the opportunity to be represented at discussions between management and employees or employee representatives. The agency and such labor organization, through appropriate officials and representatives, shall meet at reasonable times and places for purposes of negotiating a written collective bargaining agreement in regard to all matters not prohibited by statute. The agency and the labor organization shall negotiate in good faith for the purpose of arriving at a collective bargaining agreement. Such obligation to bargain shall include the execution of preliminary ground rules and any such understandings reached by the parties may be incorporated in a separate written agreement. The duty of an agency and a certified employee organization to negotiate in good faith shall include the obligation—

"(1) to approach the negotiations with a sincere resolve to reach an agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;

<sup>1</sup> See, *National Federation of Federal Employees, Local 779 and Department of the Air Force, Sheppard Air Force Base, Texas*, FLRC No. 71A-69, p. 3 (Report No. 36, Apr. 27, 1973), and related cases.

<sup>2</sup> Section 4(c) (2) should also be eliminated.

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining; and

"(5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

"The agency shall not make or apply rules or regulations which restrict the scope of collective bargaining permitted by this Order or which are in conflict with any agreement negotiated under this Order."

In addition to expanding Section 10(e), we believe Sections 11 and 12 of the Order should be entirely eliminated. Our experience under the Order has convinced us that the most fundamentally damaging aspect of the existing labor-management program is the concept of a separate category of nonnegotiable items and a separate adjudicatory procedure for determining those items. Not only are these procedures unnecessary in terms of protecting the public interest, but they invite and encourage agency abuse of the collective bargaining process. As long as these procedures exist, there will be no freedom of contract and equality of bargaining power between management and employees.<sup>3</sup> Without such fundamental rights, collective bargaining in the federal sector will remain collective begging.

Sections 11 and 12 of the Order, as interpreted by the FLRC, suggest that there exists some abstract body of items which by their very nature are nonnegotiable. As interpreted by the FLRC, these items are viewed as inherently belonging to management and any dilution of management's absolute rights will, in the FLRC's view, automatically damage the public interest because the mission of the agency would be thwarted. Presumably, in these areas of nonnegotiability, management rights are viewed as being identical with the public's interest.

This entire concept of negotiability disputes fails to recognize the underlying problems of effective collective bargaining in the public sector. The real problem is how the terms of a collective bargaining agreement—or the lack of an agreement—impact upon the public interest. The problem is not simply what the parties should be permitted to talk about at the table. Both the public interest and the mission of the agency will be enhanced by a satisfied and efficient civil service work force. It is a question of balancing the interests of the parties. In other words, the real questions are impasse questions and questions of refusals to bargain in good faith.

Only impasse proceedings and unfair labor practice proceedings are responsive to the underlying problem. Each seeks the proper balance between the public interest and the interests of employees in those areas where there may be a conflict. Balancing the legitimate interests of the public, of management, and of labor organizations and the employees they represent requires careful consideration of many factors. To be fair and accurate, these factors must be objectively determined by record testimony, as evaluated by men and women who possess the necessary expertise—administrative law judges and arbitrators.

The broad outlines of the respective rights and interests of the parties can be set forth in enabling legislation, or for the time-being, in the Executive Order.<sup>4</sup> This broad outline should strike a balance between the interests of the parties. It should not list only management rights and leave mandatory areas of bargaining unstated and in doubt.<sup>5</sup>

With the overall guidance from the enabling legislation, specific questions as to the proper balance between the legitimate interests of all concerned can be de-

<sup>3</sup> See, Section 1 to the Labor Management Relations Act which specifically recognizes the need for legislation to restore equality of bargaining power.

<sup>4</sup> This would be accomplished by defining the term "personnel policies and practices and matters affecting conditions of employment" and by expanding sec. 10(e), as suggested above.

<sup>5</sup> In a recent speech before the Maryland Public Sector Labor Relations Board, Jerome T. Barrett of the FMCS, noted the growing trend in state labor-management legislation of omitting any reference to management rights. It is felt that with management's rights adequately protected by impasse proceedings and with no right to strike or a limited right to strike, management can protect itself adequately at the bargaining table without such additional statutory protection. See, *GERR*, No. 534, p. F-1 at F-2 (Dec. 17, 1973). The states have never required separate negotiability procedures.



terminated only after a full factfinding hearing which takes into account all of the relevant considerations. To wit: the practical impact of a particular proposal on the operations of a particular agency; the validity of the reasons advanced in support of or against the proposal, including any evidence of previous management abuses; any evidence of present or past attempts to abuse the collective bargaining process directly or indirectly; and the relative needs of the employees and management as these needs may impact upon the public.

Our experience thus far under the Order amply demonstrates that the negotiability procedures set forth in Sections 11 and 12 of the Order are totally incapable of determining the proper balance between the interests of the parties. These procedures are, therefore, incapable of protecting the public interest. In fact, particularly as administered by the FLRC, negotiability procedures have seriously threatened the public interest by failing to recognize the legitimate interest of employees. The decisions of the FLRC have given management a carte blanche to abuse the very purpose for which the Order was established, to encourage high standards of employee performance and modern and progressive work practices.<sup>6</sup>

Two examples involving actual cases amply demonstrate the way in which Sections 11 and 12 of the Order operate to prevent consideration of the public interest by precluding consideration of the factors listed above (the practical impact of the proposal, evidence of abuse of the collective bargaining process, etc.). Both examples demonstrate how impasse proceedings or unfair labor practice proceedings would have given greater protection to the public interest.

The first example involves the question of whether employees should receive temporary promotions, rather than details, when they perform the work of a higher level position for an extended period of time. When a labor organization attempted to negotiate a proposal which would require employees who were properly qualified to be temporarily promoted after serving in a detail status for over 30 days, the Army was able to preclude the union from even discussing the merits of the issue through the simple device of asserting a regulation as a bar to negotiations.<sup>7</sup>

In spite of a statutory policy recognizing the principle of equal pay for equal work,<sup>8</sup> a clear warning in the FPM against management abuse of details in lieu of temporary promotions,<sup>9</sup> and a general industry practice consistent with the union's proposal, the Army's regulation was viewed as automatically precluding negotiations.

There are no factfinding hearings in negotiability disputes. Moreover, the Army's formal brief did not even bother to offer any justification for the regulation, and the FLRC did not require any justification. There was no attempt to consider the needs of employees or the needs of the Army in relying on this regulation. The Army was not even required to show that its regulation was, in fact, uniformly applied to all its component activities.

In contrast, where the same issue was litigated as an impasse, recognition of everyone's interest was permitted. The impasse panel noted the history of agency abuse in this area, as demonstrated by record testimony and exhibits, and also recognized the agency's need for flexibility and efficiency in performing its mission. Consideration was also given to the practices at other activities and agencies.

After a full hearing, the Panel found that the interests of all the parties would be served if a maximum limit on details before temporary promotions was agreed upon by the parties. If the parties are not able to reach agreement on the precise limit, the Panel will recommend a precise limit.<sup>10</sup>

The second example demonstrates how easily management can use even the threat of negotiability procedures as a means of avoiding its obligation to bargain in good faith, leaving labor organizations and their members no legal recourse.<sup>11</sup> It involves not only an abuse of the authority to approve contracts at

<sup>6</sup> See, the preamble to Executive Order 11491, as amended, for a statement of its purposes.

<sup>7</sup> *Local Lodge 2424, IAM-AW, and Aberdeen Proving Ground Command, FLRC No. 72A-37* (Report No. 39, June 1, 1973).

<sup>8</sup> U.S.C. 5341.

<sup>9</sup> FPM 300.8-4d. and e.; FPM 335.4-1e and 4-4a.

<sup>10</sup> *General Services Administration, Region III, Washington, D.C., and AFGE, Local 2151, Case No. 73 FSIP 18* (Dec. 6, 1973).

<sup>11</sup> Once an issue of negotiability is raised by management, the Assistant Secretary automatically defers to the negotiability procedures and dismisses any charges alleging a refusal to bargain in good faith. A/S Report No. 26.

the agency head level,<sup>12</sup> but also represents a clear disregard for the role of the FSIP.

The example involves an impasse case currently pending before the Panel.<sup>13</sup> The issue at impasse is whether or not references to agency regulations should be included in certain provisions of the contract and thereby be made subject to interpretation or application by the arbitrator. It is another version of the celebrated "Elmendorf" issue.

While bargaining to impasse over this issue, in a unit of national exclusive recognition at a sub-agency level, no issue of negotiability was raised. At the impasse proceedings, however, a higher level agency official actually testified on the record that while the agency would not raise a negotiability issue at this stage of the proceeding—which would permit the Panel to refer it to the FLRC pursuant to the expedited procedures—he did intend to raise a negotiability issue if the Panel finds for the union.

This official, in effect, has made it a matter of public record that he intends to force the union to go through the time-consuming and expensive process of taking the issue through impasse proceeding, only to be faced with disapproval of the Panel's recommendation when the contract comes to him for approval at the agency head level.

What possible good faith reason could there be for such a tactic? It is simply a device to delay reaching agreement? (The agency has not signed the contract, refuses to agree to a reopener, and even refused to extend the previous contract pending resolution of the impasse.) Perhaps he intends to hold the embarrassing prospect of declaring their recommendations non-negotiable over the Panel, in an effort to persuade the Panel to reach a decision in favor of the agency. What recourse does the Panel have? They cannot refer the case until the agency takes a position on the negotiability issue, and if the Panel refuses jurisdiction, it will only demonstrate the inability of the present program to deal with management abuses of the system.

If ever there was a per se violation of the duty to bargain in good faith, it is the conduct of this official before the Panel. Since we are powerless to raise a negotiability issue on our own (and should not be required to do so in any event), and any unfair labor practice would only be dismissed by the Assistant Secretary, we can only hope this official will decide to honor his obligations. There are many other examples but it is clear from the above that separate negotiability procedures are incapable of protecting the legitimate interests of the parties and are not responsive to the interests of the public. Such procedures are weighted in favor of management and no protection is available to labor organizations or employees when management uses these procedures to undermine the status of the union as collective bargaining representative, or to deprive employees of the protection of a contract.

The manner in which the present negotiability procedures invite abuse are a matter of public record in the cases described above. Cases which are now in the preliminary stages and have not yet reached the FLRC level will demonstrate, even more graphically, how negotiability procedures are used to litigate what is really an impasse question.

For example, a unit of immigration officers has proposed that the agency equip all immigration vehicles used in remote areas with appropriate communication equipment which will permit prompt contact with local law enforcement authorities. The Union is seeking this provision on the basis of its right to negotiate health and safety issues.<sup>14</sup> Both the safety of the public and of the individual officers is involved. Thus, if an immigration officer who works alone in a 100 mile patrol area discovers a group of illegal aliens in a remote border area, he now has no way of calling available local law enforcement officers for additional help in bringing in the aliens. Instead,

<sup>12</sup> Higher level agency officials still use their authority to disapprove of contract provisions as a means of avoiding a provision of which they do not approve. What should have been an impasse issue is then artificially raised as a negotiability dispute. Again, the agency's authority is absolute and labor organizations have no remedy when their members are left without the protection of a contract.

<sup>13</sup> Hearing Transcript, pp. 48-52, and pp. 87-90, *Agricultural Marketing Service, Meat Grading Branch, Washington, D.C., and AFGE National Meat Grader's Council*, Case No. 73 FSIP 26 (Impasse Pending).

<sup>14</sup> In, *AFGE Local 2595 and Immigration and Naturalization Service, U.S. Border Patrol, Yuma Sector (Yuma, Arizona)*, FLRC No. 70A-10 (Repor. No. 6, Apr. 16, 1971), the FLRC recognized a union's right to negotiate in areas of health and safety.

if attacked, he must make the appropriate response, including where necessary, using his firearm to stop the aliens. In remote urban area, without prompt recourse to local law enforcement officials, immigration officers may have to use their weapons in a populated area, thus increasing the risk to innocent bystanders.

In response to the union's position, the agency declared the proposal non-negotiable, claiming that it violates the management's rights clauses in Sections 11(b) and 12(b) of the Order. Specifically, management claims the proposal violates its right to determine technology, the methods and means of operation, and to maintain the efficiency of agency operations.

The real question here is to balance the union's interest in maintaining safe working conditions, and the agency's problem in finding the money to provide the necessary equipment. It is not a problem of interpreting some of the abstract terms in Sections 11(b) and 12(b).

Yet, by creating an artificial category of nonnegotiability items, the Order permits an agency to declare this nonnegotiable, refuse to even discuss it further at the table, and force the union to litigate the issue without the benefit of factfinding and the expertise of experienced arbitrators.

The litigation of negotiability issues takes a minimum of one year, and we can still be forced to take the question to the Impasses Panel. This would take an average of another six months. In the meantime, our members are without the benefit of a contract. Is management attempting to undermine the status of the union by trying to make their representative appear to be unable to get results? Such conduct on the part of agency management only increases the frustrations and distrust of federal workers in the present program. It serves no useful purpose.

Many more examples could be given of health and safety issues, promotion issues, efficiency of agency operations issues, etc. All of these areas require a balancing of the different interests of the parties. They do not—or should not—turn on abstract notions and dictionary definitions of terms used in what are basically management rights clauses.<sup>15</sup> The entire concept of a separate negotiability procedure is unrealistic. It creates artificial distinctions, obscures the real issues, and is simply another procedure used to divert the time and resources of unions and employees from the more significant and substantial problems. The states do not find separate negotiability procedures necessary and the federal sector should follow their example. Negotiability procedures do not protect the public interest—they only encourage management abuses and this undermines the public interest.

#### *The continuing obligation to bargain*

We believe implementation of the changes recommended above would remove the obscurities which currently plague the area of scope of negotiations.

If the present restrictions on the duty to bargain are removed, there will be no doubt as to the continuing obligation to bargain collectively with respect to personnel policies and practices and matters affecting working conditions.

#### VI. GRIEVANCE AND ARBITRATION PROCEDURES

1. Does the meaning and scope of Section 13 need amplification?
2. Should Section 13 be revised to:
  - a. Exclude from the negotiated grievance procedure grievances over agency regulations—even if regulations are referenced or cited in the agreement?—or
  - b. Provide that the negotiated grievance procedure is the sole procedure available for all grievances filed by or on behalf of unit employees thereby including grievances over agency regulations and policies not contained in the agreement and excluding only those issues subject to statutory appeal procedures?—or
  - c. Permit negotiation on scope of grievance procedure, with statutory appeal procedures as the sole mandatory exclusion?
3. Should parties be permitted to take jointly to an arbitrator questions as to whether a grievance is subject to a negotiated grievance procedure or subject

<sup>15</sup> See, for example, *Tidewater Virginia Federal Employees Metal Trades Council and Naval Public Works Center, Norfolk, Virginia*, FLRC No. 71A-56 (Report No. 41, June 29, 1973).

to arbitration under an agreement?—or should such questions be resolved only by the A/SLMR? [See sections 6(a) (5) and 13(d).].

Our position on this item is as follows:

(1) The parties should be permitted to negotiate a grievance procedure as broad as they wish. The sole limitation should be those areas in which a statute does not permit an alternate forum.

(2) The scope of the grievance procedure should be negotiated, not unilaterally prescribed by the Order.

(3) Section 13(d) should be eliminated in its entirety.

1. *Scope of grievance procedure.*—We believe the grievance should include any aspect of the employment relationship except areas which, by statute, are specifically and exclusively assigned to another forum. Unless a statute specifically provides that a particular issue must be litigated in certain forum, we believe an employee should be permitted to choose the route he prefers. For example, an employee should be permitted to liquidate an EEO issue pursuant to the negotiated procedure if he prefers. There is no requirement in the Civil Rights Act of 1972 to preclude this.

The question posed in paragraph 2.a. of the FLRC announcement appears to be an attempt to reverse the *Elmendorf* case.<sup>18</sup> There is no reason why agency regulations should not be subject to interpretation or application by an arbitrator. If agencies are applying their regulations in a fair and equitable manner, they should have no fear of submitting them to review by an independent arbitrator. This can only increase the trust and confidence of employees in the agency's effort to act in a manner consistent with merit principles and sound personnel management. Moreover, as pointed out in the *Elmendorf* case, an agency can always appeal an arbitrator's award to the FLRC if it believes the award is contrary to law or regulation.

If management contends that only management can understand the complex regulatory provisions of their operation, our question is how can employees be expected to understand? Can it be assumed that an arbitrator cannot grasp what every personnel officer must know? Most importantly, any attempt to exclude consideration of agency regulations would virtually wipe out union grievance procedures. There are no areas of personnel policies not affected in some way by agency regulations.

The *Elmendorf* issue is simply an attempt to limit the union's participation in the collective bargaining process. This is hardly consistent with the purpose of the Order and should be rejected out of hand. A system where the agency is the prosecutor, judge and jury is hardly a credible system. It is definitely not bilateralism.

2. *Negotiating the scope of the procedure.*—The scope of the grievance procedure in a particular unit should be left to the discretion of the parties—not unilaterally prescribed by the Order. The needs of each unit may differ, and we should not presume to know what is in the best interest of the parties in a particular situation.

Moreover, as a general rule, most items should be left on the table, not unilaterally prescribed. It gives the parties greater flexibility and room to work out compromises where necessary.

3. *Elimination of Section 13(d).*—We believe that Section 13(d) should be deleted and all questions of grievability and arbitrability should be determined by the arbitrator. The present procedure of referring these questions to the Assistant Secretary is time-consuming and inefficient, and is making a shambles out of contract enforcement. It should be returned to the arbitrators as has been the practice in the private sector and in the federal sector for the 10 years prior to the addition of Section 13(d).

Questions of grievability and arbitrability are essentially questions of contract interpretation and an arbitrator, not the Assistant Secretary, is the expert in this area. Moreover, as pointed out by the Supreme Court in the *Steelworkers Trilogy*, questions of grievability and arbitrability are often integrally related to the substance of the grievance itself. Therefore, the Assistant Secretary may end up deciding the substance of the grievance itself. This is certainly not what the parties bargained for nor is it consistent with the overall intent of Section 13.

The existence of Section 13(d) suggests that arbitrators are not to be trusted to do the very thing they have the recognized professional expertise to do! It is

<sup>18</sup> American Federation of Government Employees, *Local 1668 and Elmendorf Air Force Base (Wildwood Air Force Station), Alaska*, FLRC No. 72A-10 (Report No. 38, May 21, 1973).

a totally unnecessary procedure which only encourages management to avoid its contractual obligations. It is another example of how the process of the Order permit management free reign in undermining the strength of the union through extensive and time-consuming litigation in a multiplicity of forums. Justice delayed is justice denied.

A recent survey demonstrates how unnecessary and time-consuming this procedure is.<sup>17</sup> Without this added procedure, the 1973 figures indicate that it takes an average of five months from the time the grievance is filed to receive the decision of the arbitrator. If this decision is appealed to the FLRC, ten more months must be added—making a total of one year and three months to receive a final decision. If a question of grievability or arbitrability is filed, however, another six months is required to receive a decision from the Assistant Secretary, and another ten months added if his decision is appealed to the FLRC. This means it could take an additional period of one year and four months just to litigate the question of grievability or arbitrability! It would bring the total time period up to two years and seven months if all decisions were appealed to the FLRC.

The futility of this procedure and the potential for abuse is obvious from the time periods involved. Also, significant is the fact that, thus far, decisions from the Office of the Assistant Secretary (none have reached the appeal stage yet) have demonstrated that management's claims have not been meritorious.<sup>18</sup> If this procedure is not eliminated, it could be used to make a shambles out of the grievance-arbitration process.

The FLRC's reference to permitting the parties to "jointly" take a question of grievability or arbitrability to the arbitrator is unrealistic. If the parties agree, they will submit such questions to the arbitrator. They do not need a provision in the Order to permit them to do so. The fact is that unless the parties disagree, no one will raise the issue.

#### VII. APPROVAL OF AGREEMENTS

1. Should section 15 be revised to include additional limitations upon the authority of an agency head to disapprove negotiated agreements (e.g., by requiring the review to be exercised on a "post-audit" basis; by limiting disapproval to specific agreement provisions, permitting the remainder to go into effect; by setting time limits for agency action; by precluding intermediate level review of agreements prior to agency head review)?

Section 15 of the Executive Order should be deleted in its entirety since all contracts should go into effect when they are signed off by the parties, rather than being subject to review by the head of the agency or his designee. The present agency review procedures are making a mockery out of bargaining as they are extremely time-consuming, often taking many months, and the agencies have consistently refused to approve clauses that are not in violation of law or regulations, but which merely they do not like.

Certainly, after 12 years of collective bargaining in the federal sector, this paternalistic concept of higher agency authorities' approval of lower level negotiated agreements no longer has substance. If agency heads do not trust their local negotiators, then they should retrain or replace the local negotiators. Why should the unions and the employees they represent be asked to bear the burden of management's inability to direct and supervise their own local officials?

Contracts should go into effect immediately at the local level. The agency head would then have only 30 days to disapprove of a particular section. It should be specifically stated that any evidence of abuse of the authority to disapprove a contract are grounds for a violation of Section 19(a) (6).

#### VIII. OPERATION OF THIRD-PARTY PROCEDURES

1. Should the Assistant Secretary of Labor hear and rule negotiability disputes that arise in the context of unfair labor practice proceedings under the Order?

The Assistant Secretary of Labor should rule on negotiability disputes which arise in the context of unfair labor practice proceedings. (See A/S Report Number 26) The FLRC is not established to deal with fact-finding issues which would

<sup>17</sup> For a summary of the results of the survey, see, the AFGE *Washington Letter*, vol. 8, No. 36, Oct. 12, 1973, at p. 5.

<sup>18</sup> *Warner Robins Air Material Area, Robins Air Force Base, Ga.*, Case No. 40-4939 (GA); *Bureau of Retirement and Survivors Insurance, Social Security Administration*, Case No. 30-5214 (GA); *Department of the Army Watervliet Arsenal*, Cases Nos. 35-2902 (GA) and 35-2885 (GP) and 35-2892 (AP).

be involved in a mixed negotiability-unfair labor practice dispute. In this regard, to be noted is the Report and Recommendations on the amendment of Executive Order 11491 at Page 43 which states:

"Issues as to whether a proposal advanced during negotiations, either at the local or national level, is not negotiable, because the agency head has determined by appropriate authority outside the agency may be referred to the Federal Labor Relations Council for decision."

Therefore, such disputes should not automatically be channeled to the FLRC without the Assistant Secretary rendering a decision after full consideration of all the disputed facts in the unfair labor practice proceeding.

In addition, we should like to offer certain comments and recommendations with respect to section 19(d) of the Order. We believe this provision should be revised to the effect that unfair labor practice complaints may be pursued regardless of existing agency appeal procedures, such as adverse actions, equal employment opportunity discrimination, etc.

This position is consistent with our strong opposition, as set forth in our covering letter accompanying this memorandum, the FLRC's statement of December 18, 1973 that legislation would be required for such matters.

Neither the Federal Labor Relations Council nor any other Federal agency has as yet afforded express statutory or case law authority which provides exclusively for one agency appeals procedure regarding a specific management action. We have found no such authority.<sup>10</sup>

Further, it has been our experience that, in many cases, proffered evidence of unfair labor practices as an issue to support allegations of wrongful personnel actions, such as removals, will not even be considered in agency appeals procedures.

Directly on point is the October 18, 1973 FLRC NO. 73A-27 ruling in *United States Postal Service, Berwyn Post Office, Illinois*, A/SLMR No. 272, where the Council sustained the Assistant Secretary's decision overturning of the Administrative Law Judge's findings that agency management and the agency hearing officer, with subsequent approval by the Board of Appeals and Review of the Post Office Department, prevented the complainant in his removal during "the established grievance or appeals procedure" from introducing evidence of alleged discrimination because of union activity. The Council affirmed the Assistant Secretary's conclusion that he lacked jurisdiction under Section 19(d) of unamended E.O. 11491 and considered it none of his business "whether such procedures have been applied in a fair and regular manner or whether they have provided an adequate remedy."

With the above frustration in mind, we looked forward to the Assistant Secretary affording some sort of equitable relief through Executive Order 11616, which amended Section 19(d) and reads in pertinent part as follows:

"Issues which can properly be raised under an appeals procedure may not be raised under this section."

To no great surprise, it now appears that any hoped-for relief is not forthcoming. The Assistant Secretary held in *Department of Defense, National Guard Bureau, Texas Air National Guard*, A/SLMR No. 336, decided January 8, 1974, "that there is no evidence that Burgamy [the appellant] was prevented from raising under the appeals procedure the issue whether he was denied reenlistment for discriminatory or other improper reasons under the Order," again contrary to the findings of unfair labor practices by the Administrative Law Judge. Among other frustrating points of decision in this case, it should be noted that the hearing record revealed no evidence, proffered or otherwise, to support the agency's pleaded defense which nakedly contended such an issue could be raised—although any support for this contention appeared to be clearly within the singular knowledge of the agency. Thus, it appears the Assistant Secretary has created, in effect, an irrebuttable presumption that an unfair labor practice issue can be raised in any agency appeals procedure without an agency offering any supporting evidence whatsoever for its pleaded defense and, as such, the related unfair labor practice complaint would be dismissed for lack of jurisdiction.

Accordingly, we recommend that the first sentence of Section 19(d) be deleted and the second sentence be revised as follows:

<sup>10</sup> Somewhat remotely related, Executive Order 10987 provides authority for advisory arbitration in negotiated agreements for adverse actions, such as removals. However, Civil Service Commission appeals procedure is available after a final decision by the activity or agency head.

"Issues which can be raised under a grievance [or appeals] procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures."

Of course, in line with our discussion above, if there exists express statutory or case law authority which provides exclusively for an agency appeals procedure with respect to a specific management action, i.e., the law prohibits any other procedure, Section 19(d) should be amended to that effect and such authority be cited for reference by all interested parties.

Finally, regardless of whether our recommendation is accepted, we strongly believe that any favorable change in Section 19(d) would still be inadequate where administrative or arbitrated remedies based upon protected union activities result without an expressed right for effective judicial review and enforcement.

2. Should the Order be amended to provide for the investigation and prosecution of unfair labor practices by the Assistant Secretary of Labor?

We urge that the Order be amended to provide that the Assistant Secretary of Labor should have the authority and responsibility to investigate and prevent unfair labor practices.

Although the Federal Labor Relations Program has developed a staff within the Assistant Secretary's Office with the expertise necessary for proper protection and enforcement of rights guaranteed under Executive Order 11491, the program nevertheless requires that individual employees or their representatives bear the entire burden of pursuing their own unfair labor practice cases. This means that individual employees can be pitted daily against the resources and expertise of agencies such as the Department of Defense. Even the presence of a union does not necessarily correct this obvious imbalance because, under the present system, local unions must often depend entirely upon shop stewards or local officers unschooled in litigation or labor relations.

No reason or justification exists for making the effectuation of rights guaranteed by Executive Order 11491 depend upon the financial resources of an individual employee or his chosen representative. The purpose of the Federal Labor Relations Program as stated in the Preamble to Executive Order 11491 is to serve the public interest, not the interest of agency management, or the interest of unionism, or even the interest of public employees. It is time to reject the hypothesis that the wishes of agency management are automatically in the public interest.

It is also time to realize that no justification exists for expending Federal resources to support agency labor relations and training (both directly through individual agency funding and indirectly by providing programs such as the Civil Service Commission's Office of Labor-Management Relations) without also acknowledging the government's responsibility to support individual employee rights under the Executive Order.

The question is not how best to help Federal employees or unions or management. The question is how best to create a workable labor relations system in the public interest. The answer requires a balanced, even-handed approach. As long as all parties agree that the Federal Labor Relations System of the future must take cognizance of the public interest, it is only natural that the public have an impartial prosecutor with the resources and expertise necessary to protect the rights of all parties.

Accordingly, it is recommended that the Assistant Secretary perform investigatory and prosecutory functions as has long been the practice of the NLRB's counsel in the private sector.

#### IX. IMPACT OF THE EXPIRATION OF AN AGREEMENT ON DUES WITHHOLDING

1. Should a uniform policy be established that so long as the parties are negotiating or seeking to negotiate a renewal agreement dues deduction should continue until (1) a new contract is negotiated, (2) the union loses representation rights, or (3) procedures for the resolution of a bargaining impasse have been exhausted.

We recommend that dues deduction allotments be authorized immediately upon winning of exclusive recognition election and that there should be no charge for this service to the union.

Regarding agreements which are being negotiated, the Order should provide that all provisions of the old agreement including dues withholding and the ne-

gotiated grievance and arbitration procedure automatically continue in effect until a successor contract is executed. In particular, agencies should not be allowed to use dues withholding to discourage access to the Impasse Panel or the FLRC because of the time factor involved in using these third-party procedures.

Also, automatic extension of an agreement and dues withholding agreement maintenance should apply during any challenge to the status of an incumbent union until an Assistant Secretary determination of the representation question is finalized.

#### X. STATUS OF NEGOTIATED AGREEMENTS DURING REORGANIZATION

1. What special policies, if any, should be established concerning the status of exclusive bargaining units (together with existing negotiated agreements and dues withholding arrangements) which are affected by agency reorganizations?

The Order should contain provisions for maintaining exclusive units intact with accompanying negotiated agreements and dues withholding arrangements after agency reorganizations until the Assistant Secretary of Labor and the FLRC (if so appealed) have rendered a final decision as to any change.

This has special validity since recent Assistant Secretary decisions have begun to establish criteria for dealing with agency reorganizations. (See A/SLMR No. 282.)

#### XI. OFFICIAL TIME

1. Should the policy regarding the use of official time (section 20) be eliminated, modified or retained?

Since collective bargaining is as much in the interest of management and of the public as it is in the interest of employees, employees and their representatives should be entitled to the same amount of official time for training, consultation and other labor-management related matters as is granted management representatives assigned functions under the Executive Order.

Mr. HENDERSON. It's my pleasure to recognize Mr. Webber, the president of the American Federation of Government Employees. Mr. Webber, you may want to introduce your associates and proceed.

#### STATEMENT OF CLYDE WEBBER, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; ACCOMPANIED BY LOU PELLERZI, CHIEF COUNSEL; AND DENNIS GARRISON, EXECUTIVE VICE PRESIDENT

Mr. WEBBER. Thank you very much, Mr. Chairman.

This is our general counsel, Mr. Pellerzi; and our executive vice president, Mr. Dennis Garrison.

The American Federation of Government Employees represents over 650,000 Federal employees in exclusive recognition units organized under Executive Order 11491. We look forward with a great sense of urgency to the day when all of our exclusive recognition units will exist under Federal statute. In our view, that day should come sometime this year and we are most grateful to you, Mr. Chairman, for these hearings which give us the prospect that our hopes will be fulfilled.

At the very outset, I should like to stress the civic and legal philosophy with which we appear before you today. Its principles and concepts permeate every particular proposal or provision which we will be endorsing during this hearing.

Just as the Congress speaks on behalf of all citizens in matters governing the scope of political and economic life as a whole, so labor unions should be able to bargain for workers they represent in a r



ognized unit on the entire scope of all matters affecting the working conditions of employees in that workplace.

Moreover, just as the elected Congressmen in their exclusive districts represent all their constituents and not merely those who voted for them, labor unions in their exclusive units rightfully do represent all employees in that unit and not merely those who voted for them.

This system of representative democratic government has evolved a code of tested procedures which protect the best interests of all. At the heart of these procedures is the rule that the elected representative has both the right and the obligation to represent all members within the recognized unit and may not rightfully refuse to protect the interests of any.

But there is also a corollary to this rule. Just as the elected representative has both rights and obligations to the members of the organized unit, so do the members of that unit also have rights and duties vis-a-vis the elected representative. While they have the right to claim full service and protection and representation—they also have the duty to pay for that service, just as much as everyone else does.

The foregoing reflects our views on representative democracy. We believe it conforms historically to the American experience.

But there is one other distinctive element in our legal philosophy, as a union of Federal employees, which is also fundamental. This relates to our union's attitude as to the nature of Federal employment as distinguished from private employment.

As you know, we are members of the AFL-CIO and subscribe completely to its philosophy regarding the rights of all workers to organize and choose by majority vote an exclusive representative in matters affecting them at the working place. There is no difference whatsoever between us and the AFL-CIO on this matter.

We hold that the application of those rights of labor to the Federal workplace must take into account the statutory environment in which Federal employees work. Although Federal employees are all workers, the legal structures within which they carry out their duties are significantly different from those in which private enterprise employees function.

We not only state these principles—we live by them. As you know, we have opposed the recommendations of the Select Committee on Committees to abolish the House Post Office and Civil Service Committee and to merge it into the Labor Committee. The entire AFL-CIO joined us in this opposition. The principles underlying our opposition to the report of the select committee are precisely the same principles with which we present our recommendations today. There is a meaningful difference between the Federal workplace and the workplace of private enterprise. But both workplaces must give full scope to the workers and their unions to exercise their rights as representative democratic organizations.

You have already heard the AFL-CIO spokesman present the rationale of our preference among the bills before you today. I beg your indulgence in not repeating or elaborating on those arguments. Instead, I should like to use this occasion to review with you the unfortunate interpretation of data in reports concerning the current status of relations in the Federal service which appears in the state-

ment made to you by the spokesman for the administration, Chairman Hampton of the Civil Service Commission, who is also the chairman of the Federal Labor Relations Council established under Executive Order 11491.

Though Chairman Hampton's theses may be summarized in various ways, in any case he praises the present labor-management system in the Federal service as better for employees than the collective bargaining in the private sector; and he intimates strongly the collapse of the entire Federal personnel structure, if not the whole government itself, if the present Executive Order 11491 were replaced by a proper labor-management statute, whether that be modeled on H.R. 13 or H.R. 10700. Specifically, his theses may be reduced to two main arguments, as follows:

First, there is no need for legislation because the existing system is more than adequate since it includes, in addition to the alleged "bilateralisms" in Executive Order 11491, such other "bilateralisms" as union participation in the Federal Pay Council, the Prevailing Rate Advisory Committee, the Health Benefits and Life Insurance Advisory Committee and the Federal Safety Advisory Council.

Second—and here I quote verbatim:

The proposals for change embodied in legislation before you now would usher in wide and potentially disruptive departures from established systems in Federal personnel administration—beginning with the repeal of the existing Executive order program for labor-management relations, but not stopping there.

Both of these sets of arguments reflect hard and fast management biases and a complete disregard for the voluminous compilation of data submitted with the testimony. Frankly, I am underwhelmed by the vast array of paper and the illogical conclusions based on unsupported opinions.

And, as an example of the opinions, this Attachment 10, I couldn't put that out of our office, a report on a summary of the comparisons of retirement, life insurance benefits and other major benefit programs, December 1973—there's not a single number on there in comparison of one of these 25 companies or cities with the other.

As to the first, let me observe that all of the alleged "bilateralisms," excepting Executive Order 11491, are statutory. You will recall the dire predictions of doom delivered to you from the same sources when Congress was considering the passage of Public Law 92-392 establishing a statutory wage system for the blue collar employees, which up to that time had been authorized by Presidential directive and not by statute.

It's noteworthy that Mr. Hampton now cites the wage grade statute itself as an example of "bilateralism." On page 12 of his summary statement Chairman Hampton says of the National Wage Policy Committee the following, and I quote verbatim:

The Committee makeup was modified slightly and established by law as the Prevailing Rate Advisory Committee, which continues to meet weekly to work out systems and problems on the wage-board pay program.

You will note, he says the "make-up was modified slightly and established by law"—this is the kind of "slight" change established in law which we are seeking here today. That "slight change" in the wage grade system produced a chairman made neutral by law; made the

representation of management and labor genuinely "bilateral" by express statutory equality of numbers, and further provided a statutory base for the system with prescribed authority not subject to change without congressional action. You will recall, during the wage grade hearings before your committee, in our testimony we complained about the repeated 6 to 5 votes favoring management when the CSC official acting as Chairman had to cast the deciding vote on important issues involving employee rights or pay.

Instead of a management-dominated Federal Labor Relations Council, we want that "slight change" in labor-management relations. We want a neutral authority such as that proposed in H.R. 13 as well as H.R. 10700. And we want it "established in law." Since by Mr. Hampton's own admission, the change in the wage grade system brought about by Public Law 92-392 was "slight," we are perplexed by his opposition now to a similar "slight" change in labor-management relations.

But let us look a little closer at those other highly praised "bilateralisms" Chairman Hampton cited and see whether anybody at all has been violating, or trying to violate, the spirit and even the letter of the laws on which they are founded.

Let us take, for example, the Federal Pay Comparability Act of 1970, one of the "bilateralisms" Chairman Hampton cited. That law has been in existence for 3 fiscal years—the administration has had the opportunity during those three fiscal years to act on three separate occasions under that law. What happened?

In 1971, the President, on the advice of OMB, sought to postpone for a half year the 6.5-percent pay increase rightfully due Federal employees on January 1, 1972. Fortunately, the Congress placed a rider on the extension of the Economic Stabilization Act resulting in a 5.5-percent pay increase on January 1, 1972, for Federal employees. On the next occasion, the President's legal and political advisers again refused to obey the law. Instead, they recommended that the President defer the 5.14-percent pay increase due by law on October 1, 1972, until January 1, 1973. The issue was taken to the courts which ruled that the President had acted illegally. The executive branch is now laboriously going through its past records at great costs to pay this 5.14 percent retroactively for the period between October 1, 1972 and January 1, 1973. Finally, just last year, the President's legal and political advisers tried to delay the 4.8-percent pay increase, itself based on a dubious and new so-called dual pay line, from October 1 to December 1, 1973. On this occasion, the Senate in an overwhelming 72-16 vote, refused to concur.

The record of the present administration regarding compliance with the terms of the statutes setting Federal pay is the worst in American history and this is cited as good "bilateralism."

It is true there is union participation in the Federal life insurance and health benefits programs through union representation on statutorily required advisory committees. I would suggest, Mr. Chairman, that you request copies of the agendas and minutes of such meetings for the past few years and learn for yourself how sincere and extensive the spirit of "bilateralism" has been manifested in terms of sub-

stantive proposals which have been changed in any way whatsoever as a result of Advisory Committee consultations.

The situation is somewhat different in regard to the Federal Safety Advisory Committee. Assistant Secretary of Labor, John Stender, has extended every opportunity for union representatives to participate in the formulation of policy and implementing regulations; however, when proposals reached the stratospheric levels of Federal policy determination as represented by OMB, many of the safety protective measures were, in the vernacular of today, "deep-sixed."

CLAIMING CREDIT FOR PEOPLE'S WORK—HEALTH BENEFITS PROGRAM AND ORGANIZATION

Chairman Hampton builds his theses of how good the Federal labor-management system is by giving it credit for everything Federal employees have—for fringe benefits such as the health and hospitalization program, and believe it or not, even for union membership! As to the Federal health benefits program, you will recall how strongly the executive branch resisted raising the Federal Government's contribution, even though most large private employers now pay the entire cost of health and hospitalization insurance as well as life insurance.

As for union membership, I should like to state as clearly as possible that we, the unions, take full and exclusive credit for organizing Federal employees against obstacles raised against us which do not exist in private enterprise. We face delays, hindrances, difficulties from the very first to the very last moment. For example, unlike in private enterprise, Federal employee unions must always submit to secret ballot elections, at great cost in money and time, even when it is obvious that the majority of, and sometimes all, employees belong to a union. That's at the beginning—and from there on out, as shown in the appendix on Executive Order 11491 to the AFL-CIO statement before you, obstacle after obstacle confronts us.

Let us look at some figures: Chairman Hampton said, and I quote verbatim, "As of 6 months ago, nearly 1,100,000 employees, or 56 percent of the entire nonpostal Federal work force, had been organized into exclusive bargaining units. That's just about double the proportion in private industry. . . ."

Of course, Chairman Hampton is playing games with statistics. The Federal Government is the largest employer in the United States and he should be comparing unionization statistics with large industrial employers. What do those statistics show, compared to the 56 percent for Federal employees? They are as follows: Basic steel, 95 percent; motor vehicles, 95 percent; pulp and paper, 94 percent; petroleum refining, 92 percent; motor vehicle parts, 90 percent; meat packing, 84 percent; electricity and gas, 83 percent; coal mining, 79 percent; cigarette manufacturing, 72 percent.

As you can see Federal employees are not organized even as much as employees in cigarette manufacturing, let alone as those in basic steel, motor vehicles, or petroleum refining. We have far, far to go and we need legislation to help us attain our proper role.

THE ISSUE OF MANAGEMENT RIGHTS

Chairman Hampton has suggested that enactment of any of the bills before you would disrupt the Federal personnel system. Most of all, I believe, he objects to H.R. 13, which is silent on "management rights." We believe that H.R. 13 appropriately omits reference to "management rights" because these are nothing more than the corpus of the U.S. Code, none of which could be abrogated, derogated, or bargained away, no matter how weak or poor or misguided management was.

Here again, I want to ask you who in the past has been the less respectful of "management rights"? After all, who is the real "manager," the real board of directors of the Federal Establishment? It is Congress. And who recently has been disregarding repeatedly the will of Congress?

Let us review the history of the Office of Economic Opportunity. It was OEO management which proclaimed the impoundment of funds; it was OEO management which decided to violate the civil service laws; and yet when this happened, it was not the Civil Service Commission or the Office of Management and Budget or the White House which ordered the Director of OEO to exercise his legal "management rights." It was the Federal court, on petition of our union and others, which ordered "management" to exercise "management rights" in obedience to the will of the board of directors of our country, the Congress of the United States.

MANAGEMENT RIGHTS AS SEEN BY THE EXECUTIVE ORDER AND AS ADMINISTERED BY THE FEDERAL LABOR RELATIONS COUNCIL

What could be more revealing of the poor climate for collective bargaining in the Federal Government than the Executive order exclusion of a long list of so-called management rights from the test of collective bargaining?

I think this illuminates the whole landscape with an eerie light.

First, we are asked to believe that there is practically a 100-percent correlation between these so-called management rights and the public interest. We know better—every member of this committee knows better—and the administration spokesmen know better. Now, I can understand any manager not wanting to give up some authority and privileges he's gotten used to—but let's analyze the issue objectively, not just allow a protective cloak labeled "public interest" to be thrown over everything that management itself says is its "right."

Second, anyone who has ever drafted a law or regulation can take one look at the section covering these management rights in the Executive order and tell you one simple thing: No one sweated trying to find language which protected management rights of unquestioned validity but at the same time giving equal protection to the public interest or employee rights in collective bargaining. Quite the contrary. The Executive order reflects a one-sided reflex reaction on the part of managers to whom the best collective bargaining is the least collective bargaining.

Third, as a result of this very broad statement of management rights in the Executive order, any Federal manager is handed a

weapon not available to labor—which many managers will use and have used—to limit the scope of collective bargaining or even to frustrate bargaining entirely until it just can't be dignified as such by an honest man. What member of this committee, putting himself in the shoes of an agency head, doubts that he could, if he wished, find a way to relate almost any significant proposal put forward by a labor union to one of these management rights or to an agency regulation—and then declare it nonnegotiable?

Couldn't almost anything be somehow related to: the agency "mission," the agency "organization," the "grades of positions," "internal security" of the agency, the right to "direct employees," the right to determine the "methods, means, and personnel" by which agency operations are to be conducted, and the right to hire, promote, transfer, assign, retain, suspend, demote, discharge, take disciplinary action, and so forth, with respect to employees?

And, if you will then consider the exclusion of Commission, OMB, GSA, and agency regulations from bargaining, as well as the entire area of pay and fringe benefits, I think you will see why this wholesale exclusion of so-called management rights by Executive order is, indeed, a sore point with us. As long as it exists, let no honest man say we do or can have equality in bargaining in the Federal Government.

Fourth, even the mere mechanics of the system are stacked in favor of management. Management can raise the question of management rights and non-negotiability whenever it suits their bargaining tactics. This can be at the outset of the bargaining—or after expensive time-consuming negotiations—or even as late as impasse procedures. This action ends negotiations and precludes consideration of the real issues involved. It negates bargaining.

Lastly, our actual experience under the order has shown that one of the most fundamentally damaging aspects of the existing labor-management program is, indeed, this very concept of an arbitrary, unilaterally established separate category of non-negotiable items. And, also, the unique time-consuming adjudicatory process for determining them.

To sum up this point: We maintain that this whole process operates to establish management control of the bargaining process and to preclude real collective bargaining. We object to the entire concept of arbitrary, predetermined, non-negotiable "management rights." We object equally to the separate adjudicatory procedures, for determining which specific items are negotiable and which are non-negotiable.

Therefore, because these procedures are unnecessary to protect the public interest, because they invite and encourage management abuse, and because they prevent freedom of contract and equality at the bargaining table, we would propose an alternative.

#### THAT ALTERNATIVE IS COLLECTIVE BARGAINING ESTABLISHED IN LAW

Let the parties discuss these issues. Let both be charged with protecting the public interest as well as the interests of management and employees. Let all the relevant factors be considered on each issue under appropriate legislative guidelines. Let the issue, if it can't be resolved by the parties, go to a trained administrative law judge or an

arbitrator—who should also be charged with protecting the general public interest as he weighs all the factors involved, again under legislative guidelines. Only thus, we believe, will the impact of any proposal on management, on employees, and on the public be fairly and thoroughly considered and balanced.

How much bilateralism is there really in the Executive order system? Aside from the recitation of so-called management rights there are other elements in the Executive order which violate the proclaimed aspiration to bilateralism.

A clear symbol of this is the structure of the Federal Labor Relations Council itself. It consists of three top executive managers, none of them identified with labor unions representing federal employees. The Chairman of the Federal Labor Relations Council is concurrently Chairman of the Civil Service Commission. I must say for Chairman Hampton that, at least, he attended the public hearings of the Council when we provided testimony before it. I note that neither Mr. Roy Ash, the Director of the Office of Management and Budget, nor Secretary of Labor Peter J. Brennan attended any of the meetings of the Council. Though their alternates, Mr. David Taylor of OMB and Mr. Richard F. Schubert of the Labor Department are fine gentlemen, we are nevertheless left with the distinct impression that both the Director of OMB and the Secretary of Labor themselves have little personal time for, or official interest in, the rights or the problems of Federal employee unions. This is indeed a strange form of bilateralism not much better than sharecropping where the worker only sees his bilateral partner when he turns half his proceeds over to the landlord.

If there is to be genuine bilateralism, the ultimate central authority must be composed of a neutral body whose members shall not engage in any other business, vocation, or employment while functioning on that authority. We find such a central authority in both H.R. 13 and H.R. 10700. Certainly Federal employees are entitled to a legally established neutral body to supervise their labor-management relations.

Who prefers Executive orders and why? There is no one today who will challenge the statement that the "participation of employees of the executive branch, through labor organizations of their own choosing, in the formulation and implementation of personnel policies and practices and matters affecting working conditions, is in the public interest."

Certainly, President Nixon does not challenge that; he issued it in Executive Order 11491; Chairman Hampton is bound by it and does not challenge it. It appears in your bill, and I know of no person in a responsible position in the executive branch who challenges it.

Therefore, the main difference between you, Mr. Chairman, and Mr. Hampton on this point is that you believe there should be legislation on labor-management relations in the Federal service and Chairman Hampton does not. We agree with you.

What is the root cause of this difference between Chairman Hampton, on the one hand, and you and us on the other? May I offer a suggestion?

I believe that the root cause is that this administration generally prefers to execute its programs on some other basis than statute. Whenever possible, this administration seeks to act in terms of official command, a procedure by which an incumbent officerholder seeks to avoid accountability by resorting to managerial techniques and executive powers not readily subject to congressional or judicial review. We see this growing resort to command in all sectors of the executive branch today; it accounts, among other things, for the great stress on "contracting out" of Federal jobs. In this way, the rule of men by official command is gradually substituted for the rule of institutional law based on statute.

The exercise of executive command not subject to congressional or judicial review did not begin, of course, with this administration. But it has grown continuously over the period of the last 30 years, particularly because of the involvement of the United States in a series of great and long wars where the President, as Commander-in-Chief, often had to act on the basis of personal command usually in situations of military exigency outside the United States.

This situation of executing, governing, or directing by command, tolerable in military situations abroad, has unfortunately become a bad habit of life with important segments of the executive branch even in our domestic civilian affairs.

I believe that this preference for command over law is at the root of the preference for an Executive order—please note the word "order"—over statute.

This attitude of command also accounts, I believe, for the exclusion of long lists of Federal agencies and employees allegedly because of national security or fiscal integrity considerations. Supposedly, these somehow represent a conflict of interest with the rights of labor.

Our union believes in national security; we believe in fiscal integrity; but we also believe in the rights of American citizens and of the rights and duties of Federal civilian employees. And, quite frankly, we prefer statutes over commands, precisely because we believe there is a distinction between a civilian and a military service, between a government of laws and one of men.

In short, where we are designing a system of "bilateralism" for labor-management relations, it seems elementary under our theory of government that the authority for the system should stem from the Congress, through enacted law, rather than be based upon the extension of limited privileges by one of the parties, which can be altered or withdrawn at its will.

It is our firm view therefore that, in a civilian service, there is no need whatsoever to exclude any agency as a whole from coverage of a labor-management statute solely on the grounds that that agency is involved in national security affairs. The defense departments certainly are not excluded—no other agency should be either.

We hold the view that the only civilian employees who should be excluded are those employees who hold positions where the public interest in national security manifestly conflicts with, and supersedes, the other public interest that all Federal employees be accorded "par-



participation \* \* \* through labor organizations of their own choosing, in the formulation and implementation of personnel policies and practices and matters affecting working conditions." This "participation" is also a matter of "public interest" and should be safeguarded unless it clearly conflicts with the "public interest" in national security or fiscal integrity.

And we think that it should not be the agency which decides this issue for itself but that the central Federal labor relations authority should render the decision on the basis of standards developed in an objective manner. The agencies desiring to "exclude" employees should petition the authority; but the authority should have the final decision on the basis of clearly defined standards applicable to all situations.

I have raised the subject of "exclusion" of agencies and employees in this section of my statement because I believe "exclusion" is the fundamental philosophy of the Executive order system. First of all, the Executive order system excludes all Federal employees from the protections of statutory law. Second, within the executive branch, the provisions of the Executive Order 11491 are drafted in such a way as to exclude labor unions from the protections of an impartial administrative body under whose supervision both the actions of management and labor would be judged. Such a neutral body is envisioned in the Federal Labor Relations Authority contained in both H.R. 13 and H.R. 10700. How can one expect such a body of top management executives as the Federal Labor Relations Council provided by Executive Order 11491 to want to render, let alone expedite, judgments finding subordinate managerial levels violating the rights of labor? Obviously, these decisions would be delayed or rendered in an equivocal manner.

#### SUMMARY AND CONCLUSION

Consistent with the civilian character of the Federal civil service, our union requests the introduction of the rule of law through the enactment of a labor-management statute to replace the present system of Executive order, based on command.

We believe that the statements presented to you by the AFL-CIO, its metal trades department and its Government employees council and by us clearly show the inadequacy of the present system and the urgent need for legislation. To achieve this legislation, we pledge you our fullest cooperation.

In conclusion, I wish to thank you again for the great service this subcommittee is rendering the American public and all Federal employees in holding these public hearings which we know will result in legislation replacing the rule of command by the rule of law in the area of labor-management in the Federal service.

Thank you.

Mr. HENDERSON. Thank you very much, Mr. Webber.

Our next witness is Mr. Paul J. Burnsky, president of the metal trades department of the AFL-CIO. It's my pleasure to welcome you this morning and you may introduce anyone with you.

**STATEMENT OF PAUL J. BURNSKY, PRESIDENT, METAL TRADES  
DEPARTMENT, AFL-CIO; ACCOMPANIED BY PAUL R. HUTCHINGS,  
RESEARCH DIRECTOR**

Mr. BURNSKY. Thank you, Mr. Chairman.

Appearing with me for and on behalf of the metal trades department is its research director, Paul R. Hutchings.

Mr. Chairman and members of the committee, my name is Paul J. Burnsky, and I am president of the metal trades department of the AFL-CIO with offices in the AFL-CIO Building, 815 16th Street NW., Washington, D.C.

Our department is composed of 23 affiliated national and international unions of the AFL-CIO representing the workers of their many trades and callings both in private industry and in Federal establishments.

At the outset may I extend to the chairman and members of the committee our thanks and appreciation for their concern with the need to obtain a strong statutory base upon which we can work to build strong, consistent, and equitable Federal labor-management relations which will not be subject to the vicissitudes of change with which we are constantly faced under an Executive order base.

We heartily join in endorsing the testimony being given to the committee today by the AFL-CIO and by its Government Employees Council and the American Federation of Government Employees. The four appearances which we are making here this morning reflect the collective thinking and the endorsement of not only the AFL-CIO but its major affiliates in the Federal service and who have the responsibility to effectively represent such membership.

Our metal trades department was chartered in 1908 by the American Federation of Labor at the behest of the metalworking affiliates of the AFL to provide them with a vehicle through which they could coordinate their activities at all levels in all areas of their mutual concern and primarily in their joint organizational, collective bargaining, and legislative activities.

Our department from its inception has been concerned with the representation of Federal workers, particularly in the metalworking and related crafts and trades. It is interesting to note that in 1908, the year of our chartering, we chartered our first metal trades council at the request of the affiliated unions of the crafts and trades with members employed at the Brooklyn Naval Shipyard. This was followed by the chartering of similar metal trades councils in each of the other naval shipyards on both coasts and in Hawaii.

At the present time, metal trades councils chartered by our department hold exclusive bargaining rights for the trades and labor units in all naval shipyards—except only Boston, which is presently being closed down—and in various other naval activities, including weapon centers, public works centers, supply centers and other naval activities, as well as in various installations of the Army, NASA, Coast Guard, the Bureau of Standards, the National Institutes of Health and other Federal agency establishments. Our Federal employees metal trades councils presently hold bargaining rights for more than 50 exclusive bargaining units, all of which are covered by collective

bargaining agreements which embrace approximately 60,000 blue-collar workers.

Presently our metal trades councils represent more than 95 percent of all eligible blue-collar workers in all naval shipyards. We have a request pending before the Department of Navy that it grant to our department a multiple bargaining unit embracing our bargaining units in all naval shipyards and which would allow for unified and simplified collective bargaining negotiations covering all of the workers we represent in all such yards.

Our department is unique among the chartered departments of the AFL-CIO in that it is the only department that holds and exercises collective bargaining rights and responsibilities for collective bargaining units organized by local metal trades councils and their affiliated local unions both in numerous private industries and in the Federal sector. Our department and its chartered councils presently are responsible for upward to 600,000 members of affiliated local unions employed in establishments or activities where our department or its chartered metal trades councils hold bargaining rights. We have always been in the forefront of the long and vigorous effort which our trade union movement has exerted to help Federal workers gain the right to organize in unions of their own choosing and to bargain collectively to the fullest possible extent, as enjoyed by their fellow workers employed in private industry.

Long prior to the issuance by President Kennedy of his Executive Order 10988 on January 17, 1962, our department, in conjunction with numerous AFL-CIO unions interested in gaining true collective bargaining for Federal workers, urged the passage of appropriate legislation to achieve this end. We also played a major role in the task force hearings held in major cities throughout the country in 1961 preparatory to the issuance of Executive Order 10988.

During the first 5 years under President Kennedy's order substantial gains were made. That order constituted a fine first step toward extending to Federal workers their rights to union representation and collective bargaining.

Under President Johnson, task force hearings were held in 1967 on changes and improvements needed and desired; and, as we all know, such recommendations never officially saw the light of day.

Over a year and a half later, President Nixon issued his Executive Order 11491 on October 29, 1969, replacing Executive Order 10988. This order appeared to meet some of the major shortcomings of its predecessor, but it also took away from Federal workers some of the benefits they enjoyed under the original Kennedy order.

This new Executive order got into gear very slowly. It took many months for the many required applicable regulations to be drafted and finalized. As a result, very little in actual experience had been accumulated under this order when hearings were held in 1970 before the Federal Labor Relations Council on changes in it. The AFL-CIO, our department and many AFL-CIO affiliates presented testimony on major problem areas already experienced or reasonably anticipated.

Amendments to this new Executive order were issued on August 26, 1971, almost before the agencies and unions had fully assimilated the numerous regulations issued to effectuate the original Executive

Order 11491. While President Nixon's original order had brought hope for some overall improvements in Federal labor relations regulations, the amendments issued in August 1971, rather than providing improvements, reflected substantial losses to Federal workers and their labor organizations in their efforts to achieve meaningful collective bargaining.

Despite the impressive statistical totals presented by the Civil Service Commission Chairman as to the allegedly broadened scope of collective bargaining under the amended order, the cold fact is that the amended order and the interpretations made thereto and thereunder by the various agencies, the Assistant Secretary of Labor and the Federal Labor Relations Council have sharply restricted collective bargaining areas previously achieved in agreements negotiated since the inception of the original Kennedy order. Many of these areas are now ruled nonnegotiable as exclusive management rights.

Another major loss was the right to allow an arbitrator to determine the arbitrability of an issue before him in grievance arbitration cases and the requirement that arbitrability and grievability questions must now go for decisions to the Assistant Secretary of Labor before arbitration can be invoked. This, coupled with the restriction of arbitrable issues to the interpretation or application of agreement provisions, represents a real loss of one of the few areas where Federal workers had under the Kennedy order developed an effective means to obtain equitable application and interpretation of agency policies and regulations.

We are pleased to join our AFL-CIO colleagues here today in heartily endorsing not only the principle of a Federal Labor Relations Act but specifically endorsing the adoption of H.R. 13, which we believe is best designed to meet the needs of the Federal employees and his labor organizations and which we believe will assure the broadest range of meaningful collective bargaining and the achievement of a substantial reduction in the restrictions and the frustrations which have been intrinsic in the Executive order type of operation. More than a decade of operating experience extending over more than 50 collective bargaining agreements negotiated and renegotiated numerous times during that period has brought us to a strong advocacy of the compelling need for a meaningful statutory base to be placed under the whole Federal collective bargaining relationship.

As a current example of the complete lack of comprehension of normal labor-management relations proprieties even under the present Executive order, I wish to point out to the committee our experience 6 weeks ago at the Norfolk Naval Shipyard. The Civil Service Commission, through a team of its representatives, submitted questionnaires to our union stewards and to a sample of the workers which we represent at that yard. Various of the questions asked were clearly of such a nature as to invade the relationship between the stewards and their unions and also the relationship between the represented workers and their unions.

As the members of the committee will be interested, I have reproduced copies of the letter of protest which I received from our local council president concerning this matter and which has attached to it the letter of notification he received from the shipyard and the full

text of the questionnaire distributed to union stewards and the questionnaire distributed to a sample of the work force in our bargaining unit.

A reading of these questionnaires will quickly disclose to anyone with a working familiarity with either the National Labor Relations Act or the provisions of the present Executive order that numerous of these questions are improper, are loaded, and are designed to supply the Government's principal personnel agency for its use with the details of the relationships that may exist between individual stewards and their unions and between individual represented workers and their unions.

We understand that most of the shop stewards refused to answer these questionnaires presented to them by the Commission's representative. May I also point out that our local leadership at Norfolk was at no time advised of the nature of the questions that were to be asked.

At the request of our Tidewater Virginia Federal Employees Metal Trades Council, which holds bargaining rights for this large group of blue-collar workers and which has struggled to maintain these rights over a period of several years when raids by a nonaffiliated labor organization was taking place, we brought this matter to the attention of the Chairman of the Civil Service Commission. Upon failure to obtain a satisfactory solution and guarantee against further invasion of the rights protected by section 1 of the Executive order, we have now filed unfair labor practice charges against the Commission charging it with violating section 19(a) (1), (5), (6) of the Executive order and have also filed similar charges against the Norfolk Naval Shipyard for providing the Commission with the opportunity to come on the premises and have access to the stewards and workers to whom such improper questionnaires were submitted.

For the Civil Service Commission, whose Chairman also serves by Presidential designation as Chairman of the Federal Labor Relations Council—the agency responsible for the administration of the Executive order and in making final rulings on cases arising under it—to engage in such improper questioning of union stewards and represented workers is yet another persuasive argument in support of the need for an effective Federal collective bargaining statute.

Our department and its affiliated unions have devoted more than a decade of effort in striving with its Federal employees metal trades councils to make collective bargaining a meaningful functioning reality under the various Executive orders and the myriad of regulations issued in connection with the same. We are now fully and completely convinced that fairness and equity can only be achieved through the establishment of a strong statutory base under which Federal workers and their unions can develop meaningful, forward-looking, true collective bargaining which is not subject to the vicissitudes of Executive orders and administrative fiat in its application. Prompt action in providing a strong statutory base for the benefit of the entire Federal Establishment, its work force, the unions which the workers choose to represent them must be achieved without further delay.

We indeed appreciate having this opportunity to appear briefly and urge the enactment of this comprehensive statutory approach. We

will be happy to furnish your committee whatever additional information or materials it may desire.

Thank you.

Mr. Henderson. Thank you very much, Mr. Burnsky.

[The letter submitted by Mr. Burnsky regarding the Norfolk Naval Shipyard follows. The questionnaire referred to is retained in the files of the subcommittee.]

TIDEWATER VIRGINIA FEDERAL EMPLOYEES  
METAL TRADES COUNCIL.  
NORFOLK NAVAL SHIPYARD,  
Portsmouth, Va., April 22, 1974.

Mr. PAUL J. BURNSKY,  
President, Metal Trades Department,  
Washington, D.C.

DEAR PRESIDENT BURNSKY: The Civil Service Commission was in the Shipyard last week as the enclosed letter explains. The CSC met with the Conference Committee and myself to explain what they would be doing. At no time were we advised of the nature of the questions to be asked, specifically the union stewards.

I am enclosing copies of the questionnaires used. When I was advised by one of our stewards of the contents regarding union internal affairs I notified the IFPTE Local Union President and together with Metal Trades Stewards the IFPTE Stewards advised the CSC representative that no steward would participate by answering the questions.

I believe we were mislead in agreeing to stewards answering questions on labor-management relations. I can find no basis for the CSC asking how many training sessions the union has conducted nor what per cent the national union proceeds support, etc. I believe shipyard management and OCMM were aware of the questions to be asked and quite frankly it is none of their business.

I urge you to protest to the Chairman of the Commission this attempt to gather internal union information for their computer. The results of these investigations will be to effect some change in the E.O. and attempting to eliminate the support for legislation on the labor management relations.

Sincerely,

S. L. WHITEHEAD,  
President.

DEPARTMENT OF THE NAVY,  
NORFOLK NAVAL SHIPYARD,  
Portsmouth, Va., April 9, 1974.

Mr. S. L. WHITEHEAD, Jr.,  
Chairman, Tidewater Virginia Federal Employees Metal Trades Council, PEPS  
Unit Conference Committee, Portsmouth, Va.

DEAR MR. WHITEHEAD: The United States Civil Service Commission under its charter contained in Section 25 of Executive Order 11491, as amended, is presently conducting a research project regarding labor management relations in the Federal Government. The Department of Navy recommended two naval activities for participation in the study, the Norfolk Naval Shipyard being one of them.

As part of the project study a CSC team, composed of Mr. Dan Sobrio of the Washington office, Mr. Leon Wallace of the Washington office, and Mr. John Kearney of the Philadelphia office, will be on board the entire week of April 15, 1974.

Mr. Sobrio, team leader, plans to meet with each union president or conference committee chairman at the outset of his visit. During the meeting he will personally explain to you the nature and purpose of the study.

JOSEPH E. WILKINSON,  
Director of Industrial Relations.

Mr. HENDERSON. Our next and last witness is Mr. John A. McCart, the operations director of the Government Employees Council of the AFL-CIO.

I'd like to take just a moment to welcome Mr. McCart, even though that's not necessary because he's been before us so many times in the past and has always been most helpful to the subcommittee and this committee. I have waited until this moment to mention for the record and comment on the earlier remarks with regard to the very effective work that all of you and the AFL-CIO have done with regard to the Bolling Committee's recommendation because I know that Mr. McCart spent a great deal of his time coordinating the position of all of you in working with me and the other members of the committee; and suffice it to say, Mr. McCart, that I appreciate and recognize the very important role that you played in this. I believe that speaking not only for myself but for the overwhelming majority of the members of the full committee as well as Mr. Dulski, the efforts of all of you should be as gratifying to you as it is to us. We believe we have accomplished a great deal toward saving the Post Office and Civil Service jurisdiction for the benefit of the employees and the American public in the proper role of the House of Representatives.

So it's my pleasure to welcome you this morning.

**STATEMENT OF JOHN A. McCART, OPERATIONS DIRECTOR,  
GOVERNMENT EMPLOYEES COUNCIL**

Mr. McCART. Thank you, Mr. Chairman, for your very generous comments. You may be assured that the work of our organization and I'm sure the others on this particular matter will continue.

I'd like first, Mr. Chairman, to introduce the gentleman who is sitting with me. He is Mr. George Knaly, who is the chairman of our council and is the director of government operations for the International Brotherhood of Electrical Workers.

Mr. HENDERSON. We are glad to have you with us, sir.

Mr. McCART. As you know, it's customary for me not to read statements verbatim. Particularly in view of the testimony you have received thus far it would be appropriate if I refer to some of the highlights because understandably—

Mr. HENDERSON. Your entire statement will be printed in the record and you may proceed any way that you like, sir.

[The statement follows:]

**STATEMENT OF JOHN A. McCART, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYEES  
COUNCIL, AFL-CIO**

Mr. Chairman and members of the subcommittee, the Government Employees Council and its 30 AFL-CIO unions representing more than 1 million wage grade, classified, and postal employees desires to endorse as a matter of highest priority H.R. 13, one of several bills under consideration at this hearing. We support the views presented by the AFL-CIO. All of the pending measures propose a statutory base for the present executive order system of collective bargaining in Federal agencies.

We are grateful to you and your colleagues on the Subcommittee for arranging this series of hearings on legislative proposals, which are vitally important to the success of the Federal Government's program of collective bargaining for its employees.

Other witnesses will describe in detail the deficiencies of the present system of labor relations and collective bargaining in Federal service. The sum total of all the testimony will demonstrate clearly that the existing mechanisms for establishing mutually beneficial labor relations through negotiations fall in non

postal agencies far short of the expectations envisioned when the program was inaugurated in 1962.

#### ADMINISTRATION

From its inception, the system has been administered by high ranking management officials.

Under the present program, three organizations participate in its administration—the Federal Labor Relations Council, the Department of Labor, and the Federal Service Impasses Panel. The very existence of three separate bodies charged with executing different functions in the system indicates that the Federal Government has in effect a piecemeal, disparate approach to resolving labor relations problems in the agencies.

General oversight and policy direction of the system are exercised by the FLRC. The Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and the Secretary of Labor constitute the Council.

Other responsibilities, including representation proceedings and allegations of unfair labor practices, are executed by the Department of Labor.

Clearly, the officials designated to administer these functions occupy high level positions in the Executive Branch.

The third body involved in the administration of the program is the Federal Service Impasses Panel. Unlike the other two entities, the members and staff of the PSIP are recognized mediators and arbitrators. Its function is to resolve disputes arising from the failure of unions and agencies to achieve agreement during collective bargaining.

Among these three organizations, there are certain overlaps in jurisdiction.

A fourth agency plays an important function in the system. Although not a part of the formal structure, the General Accounting Office influences the course of collective bargaining. Its ability to overturn decisions of arbitrators on grievances, and its responses to agency requests for opinions about issues in collective bargaining and personnel policy matters can affect the functioning of the negotiation process.

Thus, there are two basic deficiencies in the existing structures. The responsibilities of the FLRC and Department of Labor are executed by managerial officials of the Executive Branch. And the three bodies have interlocking responsibilities.

In leveling these criticisms, we cast no aspersions on the integrity of the individual officials involved.

#### SCOPE OF BARGAINING

One of the matters addressed consistently by the unions associated with the GEC is the limitation on subjects available for bargaining. Two examples will suffice to illustrate the deficiency in the current program.

In 1970, Congress established a job evaluation and pay review task force to examine the methods of grading jobs under the Classification Act and to report its findings to the President for transmission to Congress. Two years later, that group completed its work. Throughout the 18 months of its examination, the GEC in conjunction with the AFL-CIO insisted that any revision or refinement of the system now in effect include an opportunity for strong employee participation in the plan with some form of negotiations and arbitration of individual job evaluation complaints through the bargained grievance procedure. The only recommendation of the task force on which the Civil Service Commission decided to proceed was to test use of the point factor ranking method. Action by the Commission on that test is the next step in the process. No mention has been made of the application of collective bargaining to this classification system.

Adverse action is another subject, which we believe should be available for arbitration. Here the Commission has announced to this Subcommittee its commitment to the use of an impartial third party to resolve disciplinary action issues. But no positive steps have been taken to convert the commitment to reality.

These two areas of personnel policy alone illustrate the need for expanding the limitations on collective bargaining which appear now in Executive Order 11491.

#### UNION SECURITY

One of the fundamental differences between H.R. 10700 and H.R. 13 involves the subject of union security. The first of these bills bars negotiation between unions and management in Federal agencies on this subject. The second requires



establishment of a union shop when requested by a union possessing exclusive recognition or a representation fee.

In the absence of any type of union security in the present system there exists an innate discouragement of union membership. Moreover, erosion of union membership in existing units is likely to occur. We make these assertions because at some point the Federal employee who is not a union member in an exclusive unit will become conscious that he can continue to accrue the benefits attained in the negotiated agreement, regardless of whether he continues to maintain membership. Over a period of years, this process could lead easily to a petition for decertification of the exclusive recognition status. In such cases, the stated intent of both H.R. 13 and H.R. 10700 to foster a system of collective bargaining in Federal service would be imperiled.

The resentment of union members against fellow workers who benefit from a negotiated agreement, but refuse to support the union in any way is certainly justified. It is contrary to our tradition to expect enjoyment of benefits without sharing the cost.

Stability of union membership in the bargaining unit is important to managers, as well as unions, because it promotes a sound labor management relationship. By dealing with a unified voice of the employees through their elected union officials, managers can promote understanding of policies and communicate more effectively with the employees they supervise.

But the concept of union security is more fundamental than these considerations. Those who advocate the "right to work" principle found in Section 7108(c) of H.R. 10700 insist that each worker has an inviolate right not to be compelled to join or support a union organization against his will.

There is, however, another side to this issue. In our democratic society, few, if any, rights are absolute. The "right to work" is no more absolute than the right to freedom of speech. About that guarantee in our Constitution, Justice Oliver Wendell Holmes observed that freedom of speech does not permit an individual to shout "fire!" in a crowded theater in the absence of a conflagration.

Put another way, the rights of one individual must be viewed in relationship to the rights of others. Workers in bargaining units have a right to desire security for their union. Other employees who do not share that view have a social obligation to participate with their fellow workers in the responsibility of sustaining the organization which produces their benefits.

Where union security arrangements are in force, they become a condition of employment. The prospective employee should consider this arrangement just as he would vacations, pensions, promotions, before deciding whether it is desirable to apply for a job with a particular employer.

For these reasons, we believe sound public policy dictates that any legislation approved by Congress on Federal collective bargaining contain union security provisions.

#### COVERAGE

Turning now to employee and agency coverage of the proposed law, there are several agencies whose present system of union management relations should not be disturbed. In each instance, unions and employers have established long standing systems of collective bargaining, which have proved quite satisfactory to both parties. These activities have established a broad base of understanding and a cordial atmosphere, which have permitted unions and agencies to develop bargained agreements meeting the needs of both workers and management while leaving undisturbed the Government functions. Any bill proposed by the Subcommittee should not impair these operations. Some examples of such relationships are the Tennessee Valley Authority, Bonneville Power Administration and others. Where current bargaining practices surpass permissible limits under Executive Order 11491 or the pending bills, the current relationships should be retained.

This purpose can be accomplished by incorporating in the bill Section 24(1) of Executive Order 11491. Postal Service labor relations are governed, of course, by the Postal Reorganization Act of 1970 and should remain so.

With the Panama Canal Zone Company/Government, the situation is quite the reverse. Employees and their unions in that enterprise do not possess collective bargaining rights.

Under both Executive Orders 10988 and 11491, heads of agencies are empowered to exclude from the system activities located outside the United States. Consistent with this authority, the Department of Army has decided that collective bargaining will not be applied in the Zone. Unions there possess "formal

recognition," and voluntary payroll withholding of dues. This, of course, does not entitle them to negotiate written agreements as is done in the continental United States.

No doubt members of the Subcommittee will recall there has been a history of labor relations in the Canal Zone spanning almost a half century. Employees represented by unions there are quite proud of the contribution they have made to the construction and operation of this world waterway over many decades. On the other hand, they feel isolated in labor relations matters because they are viewed as incapable of conducting collective bargaining on the same basis as their counterparts in the fifty states.

In the past year there have been several instances in which labor unrest has come to the surface. An overall reassessment of the labor relations program was begun last August during the labor dispute with the pilots, and was intensified in March, 1974, according to a recent Defense Department communication. At the moment, though, we see no prospect of introducing collective bargaining into the personnel system by Department action. Even if that occurs, it is the considered judgment of the Council that the existing executive order and any statute enacted on the subject should apply to the Panama Canal Zone Company/Government.

#### MANAGEMENT RIGHTS

From the inception of organized labor relations in our country, management rights has been the subject of considerable controversy.

Traditionally, managers have tended to resist any encroachment of their prerogatives by union insistence on making their decisions a part of the bilateral bargaining process.

Professor Harold W. Davey in "Contemporary Collective Bargaining" (1972) offered a rather perceptive analysis of the union point of view:

"American unions do not wish the responsibility of running businesses. Union leadership in most cases lacks the interest and the knowledge to perform the full range of managerial functions needed for successful conduct of a business enterprise. Furthermore, the rank-and-file union members have expressed little interest in having their leadership participating in the managerial function. In short, American unions want management to continue to manage. They insist only on bargaining with management over any policies that, *in their view*, directly affect the economic well-being and on-the-job conditions of the employees whom they represent." (P. 103.)

The problem with the management rights features of the present system is that they inhibit genuine bargaining. Agency officials are tempted to revert to the language in Sections 11(a)(b) and 12(a)(b) to insist that a proposal offered by a union for bargaining is not negotiable because it infringes on management prerogatives.

Labor relations is a dynamic method of arriving at agreement on wages, hours, and working conditions through negotiations. It would be difficult, indeed, to predict twenty-five years ago, the subjects which are bargainable today.

The fact that current private industry contracts spell out policies and procedures governing separations, recalls, transfers, promotions, and discipline does not indicate an erosion of necessary management authority. Our tendency to want to negotiate about more and more subjects as years pass reflects the expanding desires of employees in the social and economic climate in our nation. It does not connote a union intent to usurp managerial decision making.

In the absence of collective bargaining for many years, Federal workers found it necessary to look to Congress to enact the statutes providing many of the benefits and working conditions which are found in collective bargaining agreements in the private sphere. By the same token, these laws outline with considerable clarity the rights of Federal agency officials to manage their public enterprises. This situation supplies a built in series of management rights which will continue in effect until rescinded by Congress. Thus, there need be no fear that unions in Federal service will assume management functions to the detriment of the public interest.

#### CONCLUSION

Prior to 1962--the year in which President John F. Kennedy issued the first directive on Federal service collective bargaining--one state had enacted a statute on this right. Today, 30 states have such laws, ranging from the right of public employees to strike under certain conditions to a simple requirement

that state agencies confer with representatives of employe organizations in developing personnel policies. This total does not include state laws governing labor relations for teachers, firefighters, and police.

We believe the existence of the original and successor Presidential directives on labor relations in Federal agencies has contributed to a growing awareness on the parts of states, counties and municipalities of the need for enacting legislation in this field.

Yet, the Federal Government has no law controlling the course of collective bargaining for its employes in non postal agencies.

Finally, Mr. Chairman, for more than four decades this Nation has pursued a policy enunciated in law of recognizing the value of collective bargaining as a contributing factor to stable economic and social relations in our society. But there exists no comparable statute applying this fundamental principle to the millions of workers who labor in Federal agencies.

The vehicle for correcting the situation—H.R. 13—is before you. Its enactment will have the salutary effect of restoring confidence to Federal employes that their government has made a solid commitment to the development of sound labor relations. We recommend that you approve H.R. 13 as the first order of Subcommittee business.

Mr. HENDERSON. You may continue.

Mr. McCART. Understandably, some of the material in our statement is repetitive.

If you turn to page 3, Mr. Chairman, on the subject of scope of bargaining, I think it would be well to just embellish what has already been presented here on that subject with two illustrations.

You will recall that some 4 years ago Congress authorized a 2-year study of the classification systems in Federal service. Over the course of 18 months a committee of the AFL-CIO met on numerous occasions with the task force that undertook that study. There was one simple theme that we presented to the task force on many occasions and that was the necessity for employee and union participation in any system they finally recommended.

Fortunately or unfortunately, the work of that task force has been largely lost. The only surviving element of it is a job ranking factor evaluation program that the Civil Service Commission apparently intends to put into effect either later this year or early next. To date we have seen not one reference to the question of collective bargaining in this very vital area of employee personnel practices.

The other matter you're familiar with as well. That's the question of adverse actions which was the subject of a hearing earlier this year by your subcommittee. During recent testimony the Chairman of the Civil Service Commission made a commitment to third-party impartial decisionmaking in the adverse action process, but we haven't seen anything surface to date. You will recall this commitment was made as long as 9 months ago to this subcommittee.

Here again, we must emphasize the necessity for expansion of the scope of bargaining so the parties will be able to reach agreements on matters of vital importance to employees.

On the question of union security, those who espouse the concept of right-to-work feel that each worker has an inviolate right not to be compelled to join a union or to pay dues to a union. As you well know, Mr. Chairman, in our democracy there are few, if any, absolute rights. You will recall that in a case involving a theater here in Washington, Justice Oliver Wendell Holmes spoke to this point when he said that the right of free speech does not extend to an individual who shouts "Fire" in a crowded theater, if there is no fire.

So the rights we enjoy as individual American citizens have to be judged against the rights of other people. On the question of union security we have the rights of groups of workers who desire to have their union and their benefits protected through union security arrangements against the rights of individuals who do not. We feel in this case that the rights of union security should prevail.

As a matter of fact, all of us operate daily under conditions that are imposed upon us by majority action, and there's no better example of this than the Congress itself.

With respect to coverage, Mr. Chairman, the council wants to point to the reverse side of the coin that has been presented already, which is the necessity for protecting those collective bargaining arrangements that have been traditional in some agencies even prior to the issuance of any Executive orders. The reverse side is exemplified by the Panama Canal Co. Government which, of course, is excluded from coverage under H.R. 10700. There has been a long history of trade unionism in the Panama Canal dating back almost to the construction of the waterway itself.

The succession of Executive orders has permitted heads of agencies to exclude from coverage individuals who are employed overseas. The Department of the Army, with equal consistency, has excluded the workers in the Panama Canal Co. Government. They have now a system of formal recognition, a carryover from the original Kennedy Executive order, and they have voluntary payroll withholding of dues, but they cannot bargain.

There have been labor difficulties in the Canal Zone, particularly in the last few years. As a result of that, the Defense Department has advised our unions that it is addressing itself to the necessity for shoring up its labor relations program dating back to August of last year, and they have intensified this activity from March of this year on.

We are confident, however, that whatever steps are taken to improve the labor relations situation, coverage under the existing Executive order and coverage under the proposed bills will not be advocated by the executive branch and the Department of Defense and Department of Army.

We believe very strongly that the workers in that area of our Federal Government should be entitled to collective bargaining and we recommend to this subcommittee that such a provision be included in any legislation it proposes.

Mr. Chairman, we move now to the conclusion of our statement. It is generally recognized that the issuance of Executive Order 10988 by President Kennedy had a profound effect on the course of labor-management relations and collective bargaining in the public service generally, particularly at the State and local levels.

When that order was promulgated there were very, very few States which had statutes governing collective bargaining. Today there are some 30 States. This does not include the teachers, firefighters, and police who may have separate statutes. It's rather ironic that the Federal Government which stimulated so greatly the whole collective bargaining process at the State and local levels to lay finds itself without a collective bargaining law covering nonpostal Federal workers.

For more than four decades our country has followed a policy well engrained in law of espousing the collective bargaining process. Yet in the executive branch of the Federal Service we have no comparable statute.

Mr. Chairman, that concludes the thrust of our position. We join our colleagues, the four organizations at this table, in expressing our appreciation to you for your introduction of legislation, for your deep interest in this subject, and we very sincerely hope that it will be possible for you to produce a reasonable bill at a very early date.

Thank you.

Mr. HENDERSON. Thank you very much, Mr. McCart.

Because of the timeliness, let me comment on your testimony with regard to the Panama Canal Zone situation. We are aware of the situation that you commented on. I think it's fair to say that from our conversations with the Civil Service Commission, they agree that the problem does need review. I believe the possibility will be afforded us later this year to take an interest in this matter and in some way to assist in the resolution of the problems there.

We expect to be working very closely with the Canal Zone Co. and the Department of Army and the organizations involved and certainly very close attention will be given to the question that you pose as to whether or not they should be included in legislation or otherwise have the problem resolved. It's certainly one that we are mindful of.

I think it's also fair for me to put on the record at this point, inasmuch as some may believe that the jurisdiction of our committee might in some way overlap with that of the House Merchant Marine and Fishery Committee, who also as you recall was very much under the gun of the Bolling committee report, to record that the chairwoman of that committee, Mrs. Sullivan, had conversations with me with regards to this problem and the members of that committee are likewise concerned. She has assured me of the fullest cooperation but has also suggested that in this area the members of our committee probably have wider experience in the matters of collective bargaining and what kind of statutory provisions or policy decisions ought to be made. I'm hopeful that we will be able to tackle that question promptly.

Before I take the time for questioning, I want to commend all of you and your organizations for the very excellent presentations that you made this morning. You have done an excellent job of providing an over view and supporting the position of what I believe to be the majority view of the members of the subcommittee on the first point that legislation is needed and timely. I think once you arrive at that point, you begin to take off into some very deep waters as to where you're going from there.

Your statements this morning are clear not only to the need but the philosophy and the kinds of legislation that you would like to see Congress enact, and I commend you for that. I think as we begin to make the major decisions of where we're going that it will be very helpful and necessary for us to contact you again either by way of formal appearance or informally through our staffs to get your views.

Again, the most difficult thing I see in this legislation is how do we fit into our attempts to write legislation the best of our philosophies and our objectives in a balanced plan that will give us not only legislation that will be workable and manageable and efficient, but effective for the employees and your organizations that you represent. I think perhaps one of the most difficult tasks—and it's not one that's unique to this particular session of Congress, but I found in my 14 years it's always a real issue with regard to legislation, is how do we read the political situation and the possibilities of what we can get enacted into law.

This is the primary responsibility of the members of the committee and as we go to the House where all of the other Members will participate and take interest in the broad subject.

While I think we're doing a fairly good job when we come to making those political decisions, I also would like to recognize that the tone and the tenor of your presentation this morning impresses me that you're going to make our job easier. You're going to recognize that we have different philosophical views from time to time but as we demonstrate our determined effort to do a responsible job, we can compromise, we can work together. As we really get into the writing of the provisions not only do we have to decide the best kind of language, the best kind of legislation, but we also have to back away and take the more difficult view of how do you put each of these decisions together in an overall package.

I would hope, however, that as we work on this legislation and finally report out a bill from the subcommittee and possibly the full committee, that while the chairman's and the Commission's view would still be that it's not quite time for it, that the final product would be such that they would not have to run up red flags to the point of saying that it's absolutely unworkable, it's not in the interest of the country and, from what might be interpreted as political action, they would feel that they would have to recommend a veto.

I think that this final point of thinking about a veto relates back to my earlier point of the responsibility that we have in trying to devise the kind of legislation in the political situation that we find ourselves in. I think this is a part of the goal of the Members of Congress that have served on this committee.

I think that you have made our job much easier by the presentation and the testimony you have presented this morning.

The only other thing I think that can make the job a little bit easier would have been for the Chairman of the Civil Service Commission to announce that they have come to the conclusion that perhaps now is the time that we all get our heads together.

Let me also say it's been my experience with Chairman Hampton and the present Commissioners that, irrespective of their position and their position that's now on the record, as we get to making these decisions I feel that they will cooperate with us here on the committee and I hope that they will—and I have found my experience in the past that they will recognize positions that you take and they will, I'm sure, continue to maintain their position.

From the very intense interest and long-time study that the members of the subcommittee have had in this subject, we look forward to

working with all of you in this area to accomplish much for the views you well expressed this morning with regards to your members, your organizations, and on behalf of the citizens of our Nation.

With that, I would like to yield to Mr. Clay, who has been with us this morning and certainly has a very intense interest not only in this subject but all legislation affecting Federal employees.

Mr. CLAY. Thank you, Mr. Chairman.

I'd like some clarification from Mr. Meiklejohn about some statements that he made in his presentation. On page 3 you say: "The AFL-CIO and its government employee unions want to see established principles and procedures of labor-management relations that will assure Federal employees basically the same recognition and collective-bargaining rights that most other employees in the United States already enjoy."

Then, on page 13, you say: "We believe that the right to strike is basic to all American workers, public and private alike." But in the next paragraph you advocate inclusion in agreements of commitments by the parties to submit issues, including grievances and disputes concerning the interpretation or application of the agreements, to final and binding arbitration."

And further down you disagree with the provisions of H.R. 9784 extending the right to strike to public employees.

Now just what is the position of the AFL-CIO? Do you believe that Federal employees should have the right to strike?

Mr. MEIKLEJOHN. Yes. Our policy position as set forth in the resolution adopted by our 10th constitutional convention last October was in unequivocal support of the right to strike.

What I tried to indicate here was that we recognize the judgment of Congress may be different from our judgment in this respect and that if that turned out to be the case, and I believe this has been consistent with our position in our fields, that a system of voluntary arbitration would not be basically inconsistent with the support of that right. This is a matter which we feel Congress will have to decide one way or another.

We would prefer that they decide in favor of the right to strike, but we recognize that may be a very difficult thing for Congress to accept.

Mr. CLAY. Well, you prefer that we decide on the right to strike, but you're in disagreement with the strike provision of Congressman Ford's bill?

Mr. MEIKLEJOHN. Mostly because we think they won't be very effective.

Mr. CLAY. How would you recommend that we make them effective?

Mr. MEIKLEJOHN. We would prefer to see that the right to strike be dealt with in the same manner it is in the National Labor Relations Act and that is that the right of the employees through concerted action to strike be protected by law.

Mr. CLAY. So, in other words, you would advocate that we take the strike provision out of Congressman Ford's bill and include it in H.R. 13 with the proviso that there be no limitations on that right to strike?

Mr. MEIKLEJOHN. I think our position—and I'm speaking for the AFL-CIO—is that we would prefer to see a right-to-strike provision basically the same as what we have in the National Labor Relations

Act. There are qualifications in Congressman Ford's bill on the right to strike which we think tend to confuse the issue.

Mr. CLAY. Thank you.

Mr. HENDERSON. I wonder if the gentleman would yield to me just on that point.

Mr. CLAY. Be happy to.

Mr. HENDERSON. I don't want to take too much time, but Mr. Meiklejohn, this is an area that I have some difficulty with. If the Congress provides for binding arbitration, does the right to strike being written into law but limited to collective bargaining remain a meaningful right?

Mr. MEIKLEJOHN. The right to strike under those circumstances?

Mr. HENDERSON. Yes.

Mr. MEIKLEJOHN. Yes. We think it would still be a meaningful right.

Mr. HENDERSON. Well, let me follow on this because I envision that what we did in the postal reorganization was to provide binding arbitration, binding both on the management of the postal system and on the union organizations, and if that's the case, do the workers have a meaningful right? You see, we've got a bill before our committee that would give them the right to strike. If binding arbitration is in fact binding and it's effective, will the employee organizations or the employees have the right to strike?

Mr. MEIKLEJOHN. I guess what we're primarily concerned with, Congressman Henderson, is some procedure which assures equality of bargaining when the parties get to the bargaining table.

Mr. HENDERSON. Right.

Mr. MEIKLEJOHN. That is accomplished in the private sector, basically through the preservation of the right to strike—union recognition and the right to strike. If the equality of the bargaining table can be achieved in some other fashion, well and good; but it has been our experience that generally speaking the right is necessary to assure that equality. As far as the Postal Reorganization Act is concerned, I think that act does not include the right to strike. It does not include protection of the right to strike. It does provide another mechanism which is designed to achieve that equality of bargaining power.

The committee may feel that this is appropriate in this field and that it will achieve that equality of bargaining power. That's our main concern.

Mr. HENDERSON. Well, my concern really goes to why the organizations would so soon come back in the area of the Postal Service and say that they want legislation recognizing the right to strike. You have made the point this morning that Mr. Ford's philosophy has been clearly enunciated and I know of no one who articulates better on this than he does, but as you say, he gives the right to strike then goes on in his bill and takes it away.

Where I start from is that there's got to be something better in the public sector than the right to strike. If we compare it to the private sector, the industry sector, we have to recognize that industry and business always have the right to go out of business. They always have the right to completely collapse. We have to start from the premise with regards to Government service that management, ultimately Congress, doesn't have a very good alternative to providing mail service.



In other words, it's a constitutional requirement. So I would think that from the long conversations I've had with Mr. Webber for example, he feels as I do. We can have meaningful legislation without getting really hung up at this time over the so-called right to strike. I think he feels that if we on this committee do a good job of legislating that he would prefer to see legislation enacted without the members of the committee and Congress getting hung up or fighting over the right to strike and losing the meaningful legislation that we would otherwise be able to agree on and devise for the Federal employees.

Now, Mr. Webber, am I fair in so stating?

Mr. WEBBER. I'd say this, that we are very anxious to get legislation passed which will provide appropriate rights to Federal employees. We, as a union, subscribe to the principle that the right to strike is an important part of the overall rights of all workers. However, we believe that the emotional problems which would come over the right to strike question has been addressed in the legislation which was that endorsed by all the AFL-CIO unions that represent people in the Federal service, and it was a consensus when the bill was introduced that we would look down the road to first get a solid base for relations—employee—labor-management relations in the Federal service, and then let's talk about the right to strike as a single issue.

Mr. HENDERSON. I thank the gentleman for yielding.

In the political atmosphere that I see at this time, I have to announce somewhere along the line that you have persuaded me and I thought I wouldn't vote for a bill that didn't have the right to strike and you'd be torpedoed and I would be, too.

Mr. CLAY. I'm even more puzzled now as to your position on that, of the AFL-CIO.

Mr. HENDERSON. If the gentleman would yield, let me say when I'm puzzled I like to keep my colleagues puzzled.

Mr. CLAY. I'm really puzzled now because as I read H.R. 13 you're talking about involuntary binding arbitration; yet there's no other feature in this bill for resolving impasses, which means that the involuntary binding arbitration then becomes a binding arbitration or compulsory arbitration.

Now is it the position of the AFL-CIO that you're recommending to this committee that we impose compulsory binding arbitration on Federal employees?

Mr. MEIKLEJOHN. No. I would say that we're recommending that the legislation provide that the parties seek voluntarily to include in their bargaining agreements agreements which will provide for final and binding arbitration on matters arising under the agreement.

Mr. CLAY. How do they resolve impasses without submitting to binding arbitration if they don't have the right to strike?

Mr. WEBBER. Negotiation disputes and impasses I believe is title IX of H.R. 13, and it states that the Federal Mediation and Conciliation Service shall provide services and assistance to agencies and labor organizations in the resolution of negotiation disputes. When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service fail to resolve a negotiation impasse, either party may request the Federal Labor Relations Authority to consider the matter: Provided, that the parties may agree to adopt a procedure providing for binding arbitration of a negotiation impasse.

I believe that it's envisioned that there would be fact finding, there would be all kinds of attempts to achieve resolution of the impasse through voluntary means before it was referred to the Federal Labor Relations Authority which would be a three-man committee with no other job except to supervise and administer this bill to come up with a solution to this.

Mr. CLAY. I don't quite follow, but I'll accept your explanation.

Mr. WEBBER. Well, there are a number of other paragraphs which go into the details of it.

The Authority shall promptly investigate and resolve any impasses presented to it under subsection (b) of this Act. After its services have been invoked, the Authority or its designee shall assist the parties in arriving at a settlement through whatever methods and procedures it may deem to be appropriate. If the parties do not arrive at settlement through such other means, the Authority shall, with due dispatch, render its decision in writing on the matters in dispute. This decision shall be promptly served upon the parties to the proceedings and shall be final and binding upon all parties during the term of the agreement.

Mr. PELLERZI. It's essentially the same as 10700. There are some technical differences. The impasse resolution procedure is the authority under both bills with the assistance of Federal mediation and conciliation findings. There are technical differences but the resolution mechanism is the same as 10700.

Mr. CLAY. On page 10 on Mr. Meiklejohn's testimony you're advocating a separate board for Federal employees. There are two bills currently pending before the Subcommittee on Education and Labor of the House that would establish basically the same rights for public employees, State, county, and municipal employees, as this bill would establish for Federal employees. One proposes to place jurisdiction under NLRA; the other bill proposes to establish a separate agency similar to the one advocated in H.R. 13.

What's the position of the AFL-CIO in regard to those two bills pending before the Education and Labor Committee?

Mr. MEIKLEJOHN. This problem has been a matter of some disagreement between the several unions in the field of labor-management relations in State and local government employment. We have not taken a position on those bills because of that disagreement. We don't ordinarily take a position on any matter that our international unions want to pretty much decide for themselves the position they will take.

Mr. CLAY. Well, in your statement you said—

Mr. MEIKLEJOHN. We're talking here, of course, about the Federal Government where our unions are not in disagreement.

Mr. CLAY. But you say you support the idea of the separate board for the reasons NLRB is already very broad and the problem of delay which is already serious in the administration of the present Executive order program might well be accentuated across the whole scope of the labor-management field. Do you include State and municipal workers any differently than you do Federal employees?

Mr. MEIKLEJOHN. If we were called upon, Congressman Clay, to discuss the provisions of legislation relating to local and State government employees, then we would be in a position to decide what position we would take. Here we are discussing only the matter of Federal employment. As to this, there is general agreement among the unions in the Federal field that a separate authority or board

should be established independent of the National Labor Relations Board.

Mr. CLAY. But that doesn't deal with my question. I think if you can take the position that a separate board is good for Federal employees, why is it you cannot take the same position for other public employees?

Mr. MEIKLEJOHN. Because I think we have not discussed this among ourselves as to whether the organizations in that field wish to take that position. We try as much as we can to reflect the views of our membership and our constituent unions; this is our responsibility, as we see it, as a federation of international unions and if and when we are advised of a unified position in the State and local field we will take that position.

Mr. CLAY. Thank you. No further questions, Mr. Chairman.

Mr. HENDERSON. Thank you very much, Mr. Clay.

Mr. Mallary?

Mr. MALLARY. Thank you very much, Mr. Chairman. I'm sorry that I was not here for the earlier presentation of testimony. There are two or three questions that I'm not sure have been fully addressed that I would like to get into.

The first one is this. Chairman Hampton talked to us about supersedeure and he expressed concern about the impact of the passage of a labor-management relations act upon existing statutes that affect certain present conditions of employment such as classification, veterans preference, retirement, merit principles and so forth.

Do you have a position with regard to the appropriate termination or repeal of some of these provisions or could you address yourselves to the impact of this kind of labor-management relations act upon some of the present statutory provisions?

Mr. WEBBER. Well, we took a hard look at the bill. I know precisely what you're speaking of; that not all the people in the Federal service, first, are within units of recognition. Specifically, some of them are excluded from units of recognition and this goes to the start of the scope of bargaining. I believe there's a provision in H.R. 13, section 504(C), which says:

The agency shall not make or apply rules or regulations which restrict the scope of collective bargaining permitted by this act or which are in conflict with any agreement negotiated under this act.

Now I know in the discussions that we had when we were working on this that there was a question as to whether this would repeal other laws. I think it was the intent of the group that worked on it that the other laws would not be repealed. The problem is not with the statutory requirements of the law. The problems that we have encountered in the scope of bargaining are the matters of implementation of laws, the issuance of extensive regulations which are within the scope of someone's administrative authority.

Now we took a position in our testimony that the scope of bargaining should not be restricted by these so-called management rights; that these management rights which are genuine management rights are rights which are established as a result of legislation passed by Congress, and that the artificial or arbitrary management right are those artificial rights which have been established through regulation

and I can foresee no problem in negotiating contracts which in the scope of legislation and statutes which are on the books, and if we are able at some time in the future, if we have a good solid base for labor-management relations in the Federal service, and Congress chooses to relinquish action on certain fringe benefits and subject them to negotiation, then it would come within the scope of bargaining.

On the other hand, where there are statutes which provide for such statements as fringe benefits, such statements as the number of days of leave employees will have, such statements as the number of holidays that an employee will receive, such statements as veterans preference, certainly I believe that we could negotiate appropriate contracts within those parameters.

Coming to things which Mr. McCart talked about earlier, in regard to the classification problem, we propose a test program in which there would be union participation and we recommended that they run a test under the current legislation, under the Classification Act of 1949.

Now if the acts are the things which we have to work within, I don't see anything in H.R. 13 having the intent of simply dispossessing the Federal Government of all its personnel laws, but when it comes to implementing those laws, those matters which are not required by statute in which administrative discretion is permitted and we hold recognition at the level in which the discretion can be exercised, we certainly feel that we should have the opportunity and the right to bargain on those particular matters.

Mr. MALLARY. But it would not be unfair then for me to say that it would not be your intention that there would be bargaining or negotiation on those items which are specifically provided for by statute—

Mr. WEBBER. That's correct.

Mr. MALLARY. And presumably, if it is necessary from a legal point of view to make it clear, there will be no problem with making that explicit within the law.

Mr. WEBBER. I would think in the review of this particular section that we made in the last few days it may have to be redrafted to precisely express this thought that what we're concerned about is bargaining on the items which are not prescribed by law.

Mr. MEIKLEJOHN. Congressman, I think our problem is not so much the matter of statutes as it is regulations and orders of administrative officials that have created the problem as far as the scope of bargaining is concerned. I don't think that we have raised any questions with regard to the statutes with respect to veterans rights or other rights creating preferential status for a particular group, but Chairman Hampton obviously refers to or relies upon section 1704 of H.R. 13 which is a general provision that this act supersedes all previous statutes and executive orders concerning this subject matter. This is a very general provision and in the face of a specific statute and a specific area certainly there would be substantial legal question as to whether a general superseding provision could supersede a provision establishing specific statutory rights.

Mr. PELLERZ. I think you could read that, too, Mr. Mallary, as relating to the subject matter, which is labor-management relations. So

there are no existing laws on that subject matter that that provision would operate against. It would only operate against Executive orders. I think our position is that we like the scope of negotiations to go up to the statutes. The statutes are not self-implementing. They have to be implemented through regulations in almost every instance. Those regulations have to conform to the statutes and all we're asking by scope of negotiation in H.R. 13 is to be permitted to sit down with management and negotiate the implementing regulations under the statutes. We're not asking for the repeal of those statutes.

Mr. MEIKLEJOHN. Certainly we are not in favor of any action which would in any way supersede the provisions of the Civil Rights Act of 1964, for example, as amended by the Civil Rights Enforcement Act; under his interpretation that could possibly be the case; but we never envisaged this possibility under this bill.

Mr. MALLARY. Let me pursue one other question. When Chairman Hampton or other members of the Commission are in here they talk to us about the so-called neutrality doctrine, which I gather implies that agency managers theoretically do not take positions on matters of labor-management relations. Is my understanding of their understanding of the neutrality doctrine correct?

Mr. McCART. It has to be defined, Mr. Mallary. They profess that management representatives are neutral on the question of employees making a free choice as to whether they want exclusive recognition or not. I don't think even they would accuse their management colleagues of being neutral beyond that.

Mr. MALLARY. If in fact a labor-management relations act was to be legislated, would it be your feeling that it would then be appropriate for management spokesmen or managers to have the same rights of speech as they would under Taft-Hartley?

Mr. WEBBER. Oh, yes.

Mr. MEIKLEJOHN. Yes.

Mr. MALLARY. The answer is yes?

Mr. MEIKLEJOHN. Yes.

Mr. MALLARY. Thank you, Mr. Chairman.

Mr. HENDERSON. Thank you very much. The staff has prepared several questions that I think could improve the record by clarifying some points that you have made, and I'm going to ask unanimous consent at this point, because of the time limitation here, that they may submit those to you for your comments and ask that we may have the right to include them in the record at the proper point.

Mr. Webber, in your testimony you indicate you feel there's no need to exclude an agency as a whole from coverage. I'd like to have your reaction to a procedure that would permit an agency to exclude the entire agency or any part of the agency being subject to review or approval by the Federal Labor Relations Authority or, alternately, have the decision made by the President. This relates to page 18 of your testimony.

Mr. WEBBER. Did you want us to submit a written reply?

Mr. HENDERSON. Or if you could answer now—

Mr. WEBBER. We have given thought to this and as indicated in the testimony we propose that procedures be established within the Federal Labor Relations Authority for addressing questions of exclusion

of an agency or elements of agencies and that these standards be uniformly applied on a case-by-case basis. We believe that the Federal Labor Relations Authority, if it were constituted in a fashion described in either H.R. 10700 or in H.R. 13, that there would be a neutral body that it would not be simply a management action or a management decision; that it's more comfortable and less of a problem to us to not have to deal with a labor union but, rather, if there's proper exclusion, that this proper exclusion be made on the basis of standards that are uniformly applied within the Federal Government.

Mr. HENDERSON. If we were to agree that an agency should be excluded, would you like for the legislation to provide some technique or device by which part of that excluded agency might be granted the right to have organizations for their employees? For example, if the Central Intelligence Agency were exempted, would you like to see some provision in the legislation where it might be possible for a group of employees who could be identified as not being in a sensitive area that could by any stretch of the imagination affect national security, that we all know is inherent in that kind of agency, to have the right to be organized into a unit? Of course, I base this on the premise that by statute the agency would be excluded.

Mr. WEBBER. Well, we have discussed this, too, at some length, and this is one thing I would really like to have an opportunity to prepare a written statement on in regard to such exclusions. We find it very difficult to——

Mr. HENDERSON. I use this brief question to——

Mr. WEBBER. I was going to say, we have had some experience with Executive Order 11636 in which the entire Foreign Service personnel in the State Department were excluded and an alternate system of recognition was established with inferior rights for the people in the State Department with predetermined units of recognition, and a number of things which are very difficult for us to swallow. If you're going to have labor-management relationships they should be uniform. We should have uniform rules. If exclusions are necessary they should be done on a uniform basis.

Finally, it's very hard for me to feel that labor organizations are any less patriotic, any less responsible, any less worldly in consideration of security than some organization which did not happen to be affiliated with AFG, for example, or does not happen to be affiliated with the AFL-CIO; and this is a question that we would certainly like to address ourselves to in writing in response to your question.

Mr. HENDERSON. This illustrates the kind of real in-depth considerations that we will all have to pay attention to when we get to the point of really marking up and deciding on the specifics of the legislation. I'm glad that you mentioned the State Department and the Foreign Service employees because, you know, in my bill I did exclude them. I don't mind stating for the record and for your benefit that the primary reason I did this was not because I didn't think we could devise legislation that would be workable in their peculiar constraints under the law and their organization, but I simply felt that it would be a political issue that could bomb us and maybe we ought to set them aside and let them go to their own legislative committees and work this out.

Thank you very much.

Mr. MEIKLEJOHN. Mr. Chairman, we would want to comment I think on that question, too, for the AFL-CIO, and we certainly would be very happy to respond to questions that any of the members of the committee may have. Also, of course, we would be very happy and very glad to work with you in any way that we can be of any assistance in connection with the legislation.

Mr. HENDERSON. I'm sure that all of you not only can be helpful but that you will be called upon.

At this time the hearing is adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

[See p. 497 for additional information furnished by the American Federation of Government Employees.]

## FEDERAL SERVICE LABOR-MANAGEMENT LEGISLATION

WEDNESDAY, JUNE 12, 1974

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met at 9:42 a.m., in room 210, Cannon House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order.

The Subcommittee on Manpower and Civil Service is continuing hearings on legislation to cover labor management relations in the Federal service.

At the close of 1973, nearly 1.1 million civilian employees of the executive agencies of the Federal Government were represented by labor organizations. This has come about during the past 12 years, largely as a result of the relationships established by Executive orders. Because of the experience gained by both Federal agency officials and labor organization representatives during this period and the viability of those relationships, I now believe it is fitting that legislation be enacted. In addition, the necessity for these hearings is attested to by the fact that more than 25 bills on Federal labor relations have been introduced during the 93d Congress.

Our witnesses today represent two of the larger Federal independent employee organizations and recently formed coalition of public employees.

With us are Dr. Nathan Wolkomir, president, National Federation of Federal Employees, Mr. Vincent Connery, president, National Treasury Employees Union; and Mr. Ralph Flynn, president, Coalition of American Public Employees.

At this time, it is my pleasure to recognize Dr. Wolkomir and his associate. Dr. Wolkomir, you may introduce your associate and proceed in your usually fine manner. It is certainly a pleasure to welcome you before the subcommittee. My span of time as chairman of the subcommittee is not as long as yours as a leader in the employee sector, but I want the record to show that our working relationship has been a beneficial one to this committee and Members of Congress and it is a pleasure to have you with us this morning.

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**STATEMENT OF DR. NATHAN WOLKOMIR, PRESIDENT, NATIONAL  
FEDERATION OF FEDERAL EMPLOYEES, ACCOMPANIED BY  
IRVING GELLER, GENERAL COUNSEL**

Dr. WOLKOMIR. Thank you very much, Mr. Chairman, in particular for the kind words. Maybe I should let my testimony stand as is based on that introduction. To my right is Irving Geller, NFFE's general counsel.

We are proud once again to appear before you, Mr. Chairman and the members of this subcommittee, and once again to share the views of the National Federation of Federal Employees on management relations with employee organizations and to review our findings and recommendations based on day-to-day observation since the promulgation of the first Executive Order 10988 and based on the many years of experience prior to and after its issuance in 1962.

On October 3, 1973, Mr. Chairman, you introduced H.R. 10700 and stated that it would provide "a statutory base for labor management relations covering Federal employees of the executive branch. It preserves for employees and their labor organizations the rights and benefits now enjoyed." Therein, in actuality, rests the core of the problem.

The NFFE from the outset has favored legislation rather than an Executive order in this area. We took this issue to court while other unions, now joining our stand, proclaimed the first Executive order, "the Magna Carta for labor management relations." Legislation enacted by Congress has the force and prestige of law, not the less persuasive tactic of hearings before executive branch panels. It is not subject to whimsical revocation but can still be amended by holding fruitful hearings whose various points of view can be developed. A statutory base provides basic rights and defends the liberties provided. We sincerely hope that a statutory base will provide legally a true Magna Carta for employee management relations in the Federal sector.

The field of public relations is too complex to be discussed lightly with a cursory review that can be summed up in a simple proposition. Permit us the time for a few general remarks. Twelve years of experience in the Federal sector under Executive orders and the experience at the city, county, and State levels has shown that spelling out collective-bargaining procedures via legislation has tended to lessen the chances of strikes in the public sector. We are convinced, as mandated by resolutions at NFFE consecutive National conventions, that a law, backed up by injunctive power and penalties, will reduce the likelihood of strikes. Others may argue that the withdrawing of services, individually or collectively from a public employer is not committing an illegal act. In truth, we find that a strike in the public sector is in fact a strike against themselves where public employees are involved.

In addition to the strike issue, the problems of the union or agency shop, the question of inherent management rights, budget, technological changes that affect employment conditions, reorganizational structures, and the selection, promotion, and direction of personnel amongst others, are further areas of consideration. Wages, hours of work, fringe benefits, and other conditions of employment are subject to congressional action in the Federal sector. Thus there exists a

dichotomy in collective bargaining where the bread and butter issues are alienated and not really bargainable.

Some meaningful system must be derived to provide the public employee an opportunity to participate in other areas of concern involving his daily condition of employment including the administration of policy and perhaps policy itself. The gross class distinctions created by Executive orders are other points of consideration. Is the individual who supervises one other individual, or the supervisor over a secretarial pool truly management? We believe that an inherent conflict of interest, vis-à-vis the management role, should be only where there is a true conflict of interest in fact. Elected or appointed officials, true policymakers, not administrators of policy, should be considered a part of management. All others should be members of a unit.

In your opening statement at these hearings made on May 21, 1974, you stated, Mr. Chairman, that—

Because of the experience gained by both Federal agency officials and labor organization representatives during this period—that is, 12 years—and the viability of those relationships, I now believe that it is fitting that legislation be enacted. This legislation will place the two parties on an equal footing when dealing with each other both at the negotiating table and when appearing before third parties envisaged by the bills before us. I believe that it is also of importance that employees and their representatives have access to the judicial process when they have exhausted whatever administrative machinery is established.

The rest of your statement is a matter of record. We purposely extracted that statement because it deals with the heart of the problem. A statutory base, balanced evenly by the scales of justice for both management and employees and the right for redress before an impartial third party is desperately needed. You and your staff, as well as those of the members of the subcommittee, should be commended for a forthright and objective approach to a very perplexing problem. The fact that over 25 bills on the subject have been introduced in the 93d Congress further augments the need for legislation and indicates widespread interest.

In addition to the summaries of the key legislation proposed, the subcommittee also provided comparisons of Executive Order 11491 as amended with key legislation prepared by the Office of Labor Management Relations and CSC. These comparisons have provided an excellent source for review and an orderly procedure to pursue an in-depth coverage of all pertinent issues. It thus becomes obvious that this subcommittee realized to the fullest degree the complexity of public employee-management relations, appreciated the self-centered interests of many involved, and finally provided the forum for expression.

For 2 days, the chairman of the CSC/FLRC eulogized on the history of labor management relations, the role and authority and need of a central administrative body, supersedure issues, merit principles, and other divisionary matters. Our purpose is not to belabor the views of entrenched management but rest our case on its own merits, using the comparison pamphlet of May 15, 1974, as our guide. We do compliment the Chairman of CSC for providing much data in his testimony and enclosures that we intend to use, we hope objectively. Using the format of the comparison pamphlet of May 15, 1974, by subject as itemized, we offer the following:

TITLE

The Good Book teaches us that "a good name is rather to be chosen than great riches." We thus recommend that the title of the proposed legislation be changed to Federal Service Employee-Management Act of 1973, with the proper subchapters noted. With no attempt to be ludicrous, we have experienced for 12 years an attempt to emulate private sector climates in the Federal sector without providing the teeth, institution, or even the ultimate weapons so essential to true collective bargaining in the private sector. In the Federal public sector, we deal with approximately 70 departments and agencies, each with multiple missions and services to the public. We are public service oriented as Federal employees and are presently involved in playing at the sophistication of the art of collective bargaining by even using a title synonymous with the National Labor Relations Act as applicable to the private sector.

We thus have even plagiarized said act by attempting to bring its grammatical errors into a public service oriented climate. The program even in title should imply a truly meaningful program—for/of/and by Federal service employees and management. We say this with due reverence to our sister unions in the private sector.

PREAMBLE

We heartily concur with the preamble to H.R. 10700 (sec. 7101). In order to be consistent, we recommend that the reference in to "labor organizations" throughout the bill be changed to read "union organizations."

POLICY

We heartily recommend grave consideration be given to suggested changes to section 7103(b) (2) of H.R. 10700 and related sections of H.R. 13 and H.R. 9784.

The question of supervisors is of deep concern and has caused grave problems under a series of executive orders:

The question of union representation for supervisory or management officials is one which should be left to the sole discretion of the union. There are examples, most notably the *Rule* and *Fitzgerald* cases, in which management officials are involved in disputes with agency management that have a bearing on the rights of all agency employees. In these instances, unions should have the option to offer its services to the employee even though he is not, indeed could not, be a member of the union because the case may afford an opportunity to take issue with an agency policy of concern to unit employees.

A recent FLRC decision relating to exclusion of supervisors has created chaos throughout the Federal Service. The breadth of the present definition is so all-encompassing that agencies are in the process of forcing large scale exclusions from employees in units all over the country. Here again the assumption seems to be that union membership requires fealty to the union and a corresponding disloyalty to the agency.

The question should be: Is the employee (supervisor) an instrument of agency policy? Is he in a position where he is required to make

judgments about the implementation of policy? If not, if he is merely parceling out assignments, dividing work among employees but is not in a position to decide how much work or in what manner it will be performed, he should not be excluded from the unit. If he has no significant role in the labor management relationship, in the collective bargaining relationship, he should not be excluded.

That a supervisor plays a role in recommending employees for promotion is no reason for exclusion. In the private sector there are numerous examples of foremen who play a significant role in hiring and firing employees, yet they remain participating members of the union.

Unless there is a demonstrable conflict of interest in fact in the two roles, we believe that all first line supervisors should be permitted to fully participate in union activity. Such a conflict of interest would exist if a supervisor found himself in a position to make a judgment on implementing a policy of the agency in which he could reasonably be expected to confront a conflict of divided loyalty because of the contradictory policies of the union and management. Only conflict of interest in fact, where a policymaker is involved, should be considered as a base for exclusion.

The best example of this is the inherent conflict of interest faced by the Chairman of the Civil Service Commission in his role as CSC Chairman. There, independent judgment must be exercised on policy questions. Thus, because of two institutional responsibilities, divided loyalty is inevitable.

The key point is that the entire body of law on supervisory exclusion has created utter chaos. Management has been given a blank check to declare that a unit member performs supervisory duties and can therefore be excluded.

Our experience has been that lower level supervisors cling to the union for support. They do not consider themselves to be management officials.

Thus, for purposes of legislation, the only time a supervisor should be excluded is when he has a role that can clearly be defined as managerial; that he has a stake in the role performed by the agency, not if he is merely performing a perfunctory supervisory role such as keeping attendance records or announcing the lunch hour.

Further, there should not be a presumption that any employee above a certain grade is a supervisor. The burden should be on the agency to prove that he is in fact a supervisor either in a unit hearing, or if the employee is already in an exclusive, through a unit classification hearing. Pending the outcome of the hearing, the employee should remain in the unit.

#### DEFINITIONS

*Agency.*—Our recommendation in this area of definition necessitates some explanation.

No document should be written and construed in such a manner as to raise questions about the Government's willingness to establish a truly meaningful program. Fundamental changes must be carried out in order to put the parties on a more equal footing. Second, a number of collateral policies, which as presently implemented tend to denigrate and undercut the position of unions, should be altered. Finally,

our experience indicates certain procedural reforms would be desirable to increase the effectiveness of the program and to promote professionalism.

Section 7103 (a) (3) of H.R. 10700 is entirely too restrictive. The underlying assumption seems to be that unions are, in some way, a threat to the security of the Federal Government; or that membership in a union requires of the employee a higher degree of loyalty to it than to the employer. This assumption, we believe, permeates the present program as a whole, and is the major reason for the failure of the Executive order to provide a means for employees to be effectively represented.

We do not object to exclusions of certain agencies such as FBI, CIA—already excluded—and possibly DIA. These agencies clearly perform intelligence work and are concerned with national security. The problem is with the broad grant of authority to the agency head to exclude employees who he alone believes should be excluded because he believes subjectively that it is not consistent with national security requirements. While there may have been a time, when for purposes of a cautionary approach, this grant of authority was necessary; nothing has occurred since the implementation of any of the orders to justify the fear.

Every agency has employees that perform investigative duties and audits. But in the future the agency should be required to petition the Authority as proposed in H.R. 10700 if they want to exclude these employees from participation in union activities, and the agency should carry the burden of proof in establishing the reasons for the exclusion, or carry the burden of proof in unit hearings on the question of exclusion. The standard applied should be that only those employees directly involved in recommending and formulating labor relations policies should be excluded.

The Authority should assert its function by establishing criteria which should be applied in these cases—with a strong presumption that all employees should be permitted to become union members.

The union's purpose is to represent employees on matters relating to their working conditions. An employee involved in investigative work has concerns which are no different than those of other Government employees; they are concerned about promotion policies, wages, leave, travel regulations, assignments, and a number of other issues. To give such employees an opportunity to organize will in no way threaten the mission of the unit in which they are employed.

The proposed bill should be amended to either eliminate the term "investigative" or define the term narrowly in an additional subparagraph. Further the terms "intelligence" and "security work" should be accurately defined, and the sole judgment of the agency head should be made reviewable.

In stating this, we do not imply that such exclusions are not justified in some instances but rather that, as they now read, their application can result from a simple desire to avoid having to deal with a union. As stated, most agencies perform some kind of investigative work; the question is will such work be compromised by an employee's membership in a union?

In short, discretion should be taken away from the agency head in this area. The slipperiness of the term "national security" should be

obvious to everyone by now. Moreover, we strenuously object to the implication that unions are somehow disloyal, that is, note the language of section 3a (4) of the Executive order and practically retain in section 7103 of H.R. 10700:

Any bureau . . . which has a primary function of investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring the honesty and integrity in the discharge of the official duties.

Only national security requirements and considerations should be of issue. The internal security aspect can be resolved to the Authority.

We heartily recommend the broad definition as recommended in section 201 of H.R. 13 with the above-mentioned suggestions in mind.

*Employee.*—Based upon our previous rationale on the definition of agency, we consider the proposed definitions of H.R. 13, S. 351, and H.R. 9784 more appropriate and inclusive.

*Supervisor.*—As stated under our policy recommendation, we believe that the definition of a supervisor requires substantial change to realistically denote significant supervisory responsibilities in the Federal service. The only instance wherein supervisors should be excluded from the unit is when supervision is full time and includes significant managerial with the full range of responsibilities which represent the final authority to affect the conditions of employment of employees within the supervision of an official. We recommend the following definition:

Supervisor means an employee spending full time in his position having final authority or possessing the final recommendatory authority in the interest of an agency to hire, transfer, suspend, remove, reduce in force, promote, assign, reward, and discipline employees with responsibility to direct them, make adjustments to their grievances or to be the final recommendatory authority, when in connection with the foregoing the exercise of authority evidences substantial supervisory responsibilities and discretion, thereby excluding first-level supervisors, unless they possess the full range of supervisory authority.

*Guard.*—The separation of guards from other employees seems to be based on the 19th century notion that guards and other employees are bound to clash. Guards in the Federal sector are not Pinkerton agents. There is no right to strike which obviously reduces such a likelihood.

During the entire history of the Executive order, we know of no incident which has borne out the fears implicit in the separation of guard organizations from other employees.

The only basis for excluding guards from the larger overall unit should be the same as those applied to all other unit determinations. If the history of bargaining is the same and if the community of interest is the same, they should be included.

Possibly we might permit the guards themselves to elect to be represented in a separate unit—much as professionals do presently. But our experience has been that guards wish to be part of the overall unit; a good example is the case of Tooele.

Moreover, the Federal Government has other protective devices, like the Executive and Federal protective services.

There is no rational basis for setting guards apart from all other employees. Implicit in the reasoning behind this exclusion is the belief that unions threaten the security of Government operations. We recognize, though we are not sympathetic, with the complaint of manage-

ment officials that the unions create headaches; however, this is not synonymous with a threat to the structure of the Government.

We heartily recommend removal of the guard definition and the removal of guard exclusion in union participation.

*Union organization.*—We concur with the H.R. 10700 definition of a union organization as defined in section 7103(a)(4). Dues withholding, however, should be applicable only to those unions so defined. The granting of dues withholding to an association of supervisors and management as provided by section 21(b) of Executive Order 11491 is in the face of facts a clear management bias provision. Unions are required to go through elaborate and expensive election recognition procedures, negotiate agreements that are costly and time consuming, while on the other hand supervisory and management associations are handed the "holy grail" based upon an agency subjective whim or fancy. Unions are subject to the Lobbying Act and appropriate reporting, the others are not.

*Agency management.*—The conflict of interest clause as proposed in the H.R. 13 legislation is more definitive of the management role and is recommended for use.

*Authority.*—We endorse the concept and need for a Federal Employee Relations Authority. One does not have to be expert in the labor-management scene to appreciate the implications and need for an institution that will do something more than just stand by while the Federal collective-bargaining program falls in disarray. It is clearly apparent that the public interest must be protected via the principle of collective negotiation in areas of public service limited as it is. Although both unions and management render lipservice to true third-party intervention, Executive Order 11491 offered the FLRC and the FSIP as alternatives but permitted the reins to be held by the hands of management. The third party to the holy triumverate offered was A/SLMR. This falls far short of the authority as defined by practically all proposed legislation.

On October 1967, at the hearing before the President's Review Committee on Federal Employee-Management Relations, NFFE proposed the establishment of an entirely new board or agency to determine rules and regulations and administer the employee-management cooperation program—composed of three members to be appointed by the President, confirmed by the Congress, to assure that an independent, non-political, nonpartisan administration will result. Such board or agency will establish uniform rules and guides for all agencies, which shall be equally applicable regardless of the mission of the agency. This will assure greater uniformity of interpretation and application of rules and guides. It will assume all of the unit determination and election functions and review of violations of the Code of Fair Labor Practices now vested in the Department of Labor, as well as policymaking and rulemaking functions to reflect fully the spirit and intent of the Government employee-management cooperation program. In that context NFFE endorses sections 7104 and 7105 of H.R. 10700.

Experience has indicated, however, despite the general assumption by the Authority of both the FLRC and A/SLMR functions, that itemizing specific definitions of the terms "grievance," "confidential employee," "complaint," "supervisor," "professional," et cetera, as pro-

posed by section 7103 of H.R. 10700, may seem explanatory, but could lead again to the CSC and agency restrictive interpretations.

Despite Chairman Hampton's success story that the Executive order program is changing and maturing through an evolutionary process, we are faced daily with such frustrations as a "lack of feel" by management bespeaks of interminable delays, inconsequential agreements, waste of taxpayer money on trivial and negative issues, unduly restrictive regulations, indiscriminate tagging of employees as "supervisors" and/or "professionals," arbitrary conflict-of-interest determinations, et cetera.

For the above and many other reasons, NFFE recommends the broad aspect coverage of definitions as spelled out in H.R. 13 and S. 351. These are more receptive to the rank and file felt needs.

#### APPLICATION

For reasons previously stated, here again, we recommend the coverage aspect as defined by H.R. 13. We do not object to exclusion of agencies which clearly perform intelligence work concerned with national security. When an agency's and/or employee's mission is not national security, but concerns the security, or internal audits, et cetera of the agency itself, the agency should be required to petition the Authority for such exclusion and carry the burden of proof in establishing the reasons for such exclusion. The standard applied, however, should affect only those employees involved and not the population of a complete bureau or division of said agency. The Authority would thus eventually establish concrete criteria.

#### ADMINISTRATION

*Authority.*—We emphasize NFFE's endorsement of sections 7104, 7105, 7117 of H.R. 10700. Although all proposed legislation seems to agree on the need for such an Authority, grave consideration should be given to the arbitrability and grievability questions becoming subject to the negotiated grievance procedure.

Here again, experience has shown that clarification in the area of negotiated grievance and arbitration procedures are desperately needed. Just as contract negotiations should include issues covered by agency regulations, the parties should be permitted to subject disputes over agency regulations to the negotiated grievance procedure. The only exclusion should be statutory appeal rights.

In the initial stages, it would probably be best to give an employee the right to choose between the agency procedure and the grievance procedure. While we believe it is important that the employee eventually have a single remedy; for purposes of examining the effectiveness of the program, a choice should be given, at least until some feedback can be obtained. Numbers as exploited by Chairman Hampton's report do not provide a measure of the equity involved.

Subjecting interpretation of agency regulations to decision by arbitrators will reduce employee frustration with agency appeals procedure. It would reduce delays, and in general result in more equitable results. Statistics show that employees win close to 50 percent of cases handled by arbitrators but the percentage is far lower in cases handled through the agency grievance procedure. It should be obvious



that the reason for this is the conflict of interest encountered by the appeals examiners. The Civil Service Commission recently recognized the problem in reorganizing the adverse action procedure by providing for the complete independence of the appeals examiners.

For the reasons stated above, we would support a proposal to give a grievant the choice of going to an arbitrator or to the Authority to determine whether or not a grievance is subject to a negotiated grievance procedure. All present regulations in addition should be incorporated by reference—arbitrators within the authority structure can judge whether they are properly applied—and then this would require negotiations on the charges.

*ULP.*—With reference to ULP's, we support a change to present procedures to provide for the investigation and prosecution of unfair labor practices by the Authority.

In this connection, we would like to call to this committee's attention the present procedures followed by the DOL area offices in investigating allegations of unfair labor practices. It is our contention that if the charging party makes out a prima facie case, the charge should go to hearing. The area offices are conducting investigations in a manner which in effect, requires the charging party to plead and prove its case before a hearing is granted. This results in interminable delays which is particularly frustrating since the remedies available are prospective only.

The Authority should study the possibility of establishing a summary proceeding, similar to a temporary restraining order, when the charging party makes a substantial showing that an unfair labor practice has been committed which threatens irreparable injury. Included in this category would be unilateral cancellation of dues withholding and failure to accord appropriate recognition.

The issuance of a cease-and-desist order, while useful in the aforementioned summary proceedings, is totally inappropriate in most unfair labor practice situations. Prospective application is totally meaningless, particularly when most fact situations differ. While adverse publicity may have positive effects in some agencies, others are totally unconcerned with repeated citations for violations. The Authority should be empowered to order remedial action. For instance, in appropriate circumstances, reductions in force should be suspended, reassignments canceled and backpay awards granted.

These actions, as well as others not enumerated here, are presently imposed by other agencies of the Government or by the courts. Since the Authority will be the court of last resort to parties covered by the law, it should be exercising similar powers. The present procedure for resolving unfair labor practice complaints is totally unsatisfactory. DOL's only investigation is conducted by correspondence, which is time consuming. Whether the complaint is considered valid for a hearing most often depends on whether the compliance officer takes the union's submission as fact over management's rebuttal, most often, the decision comes from 12 to 18 months after the ULP. And finally, the decision is simply a cease-and-desist order, with no chance of the complainant being "made whole."

Further, the cease-and-desist order most often does not touch the management official who violated the order. For example, a recent ULP case involving an Air Force colonel was resolved by agreement between

DOL and the Air Force activity; yet the cease-and-desist order was not signed by the colonel who violated the order, nor was he considered to be a party to the agreement. We might add that the so-called resolution of the ULP came 1 year after the violation.

It is our considered opinion that the system must be changed to affect procedural reforms in this area by utilizing the following procedures:

- (a) On-site investigations immediately upon receipt of a complaint where a substantial showing that an unfair labor practice has been committed;
- (b) A summary proceeding, similar to a temporary restraining order, where on-site investigation reveals that a ULP may have been committed which threatens irreparable injury;
- (c) Resolutions of ULP's within a 120-day time frame; and
- (d) "Make whole" remedies within a reasonable time.

#### RECOGNITION

Although NFFE, for mere sake of conformity, generally takes an acceptance stand with reference to section 7106 of H.R. 10700, we of necessity must call to the committee's attention the gradual trend toward private sector recognition procedures within a service-oriented environment. A review of basic concepts is most essential if a legislative or statutory base is to be utilized.

The public interest and the preservation of the merit principle are of paramount importance. Only shared decisionmaking can provide an equitable forum. "Conditions of employment" defy concrete definition and become even more restrictive in a collective-bargaining environment involving public employees where bread and butter issues are controlled by law. Thus, the "right to be heard" via recognition procedures bears close scrutiny.

Present guides implementing this subject to Federal departments and agencies concerning solicitation of membership, et cetera, are clearly contrary to the public interest. This is reflected in both FPM and DOL regulations, which establish rules for recognition and organizational work. It seriously inhibits employee organizations from conducting organization drives where another employee organization has gained exclusive recognition. A majority of those voting is not a vote of a majority in a unit.

We have called attention to the fact that the basic goals and purposes of employee-management cooperation are not achieved by this ruling. In point of fact, it has had contrary and negative results in which the Government, the public, the employees, and all unions will be and are being seriously disadvantaged. In this ruling, we have mistakenly followed rigid private sector union policy, and Federal employees have been and are being effectively denied the opportunity to choose or not to choose the employee organization they want to represent them, since it does not provide the means for true democratic orderly change. It tends to establish an iron curtain between the agency and the unions seeking to gain membership. Historically, organizing always has been permitted at the installation as contrasted with the private sector concept where such practice traditionally was and is for the most part prohibited.

The NFFE has pointed out that the policy is unsound from the standpoint of the public, the agency, and the unions concerned. Employee organizations lacking exclusive recognition will be obliged to conduct solicitation and rallies and meetings outside the gates of military installations, hospitals, and other public buildings. It will encourage employee organizations to make inflammatory and exaggerated comments regarding the agency, operating officials, and rival unions. This in fact already has occurred and is increasing in volume and shrillness.

The present procedure, beyond doubt, has resulted in widespread misinterpretation, especially in those situations where parts of the installation are covered by exclusive recognition and other segments are not, and some having several exclusives.

The net effect has forced employee organizations into harsh organizational practices including some of the dangerous and improper acts which have for so long disfigured organizing activities in the private sector.

On the other hand, the policy previously in effect in the Federal service created an atmosphere in which employee unions could properly and decently provide information to employees under reasonable, open conditions—and this is a policy which should be encouraged instead of being, in effect, repealed by the present methods.

At the risk of having the Walls of Jericho fall on us, we defy the self-centered hue and cry of our sister affiliated unions by stating that though we “represent” a majority of Government employees under exclusive recognitions, they are not paying members. Thus, a large voice is not heard, not consulted with, and is in fact intimidated by both management and the unions. They should at least be represented by a return to the concept of “Formal Recognition” as it existed under Executive Order 10988.

Also, present policy represents a further invasion of the right of free speech as exemplified by the curious assurance given in the guidance to agencies that employees still have the right to normal person-to-person communication—a bureaucratic reference which should win some sort of prize for egregious irony. “We can still talk to one another,” the NFFE has noted wryly in commenting on this policy.

Present guidance also includes an organizational-limiting provision, obviously included for the accommodation of entrenched Government employee unions and may I say, we are some of them and ostensibly designed to forestall cutthroat raiding and virulent jurisdictional disputes. But its practical effect will be to handicap the legitimate and proper organizing activities of many independent Federal unions which are not plagued by such quarrels.

The introduction into the Federal service of various bare-knuckle type organizing methods, taken from private sector unionism, has had widespread adverse effects. One result among many has been outbursts of bitter jurisdictional infighting by the unions. Moreover, it has resulted in a flood of literature, some of it scurrilous, some of it libelous, as the unions have engaged in a no-holds-barred contention for membership and the winning of recognition elections.

Recently, at a meeting of union officials with some Department of Defense management people, there were displayed piles of such literature with which various military installations have been flooded. There

are those, of course, who hold that if that kind of name-calling is an accepted fact of life in private sector unionism there is no reason why Government worker unions should not be allowed to sling mud along with them. On the other hand, there are many members of Federal employee unions who do not regard the situations as being the same; do not relish the gutter tactics, and are urging their unions to follow the high rather than the low road. There is no doubt, also, that those who take this view—that there are or least should be, some important differences in modes of conduct in the public and private sectors—run the risk of being called management stooges, members of company unions, and other cliches from the shopworn grab bag of smear phraseology. But it also is evident that the rising crescendo of attacks is having a progressively more negative effect as scores of thousands of career employees who should be members of unions are declaring “a plague on all your houses.” The credibility gap for both management and the unions thus widens!

Legislation should consider that all requests for unit determinations, election or violations of the Code of Fair Labor Practices should be reviewed and decided by the Authority previously proposed to make appropriate investigations and decisions. Utilization may be made of outside arbitrators or mediators from the Federal Mediation and Conciliation Service. However, the full-time employment of mediators and arbitrators employed by the Authority would be preferable to achieve greater uniformity and understanding.

Methods for training agency personnel in the principles and procedures of consultation, negotiation and settlement of disputes have been provided by the agencies. Such training opportunities should be afforded equally to all employees. We appreciate, Mr. Chairman, the effort in this direction made by you, which resulted in a Comptroller General's decision which permits the granting of miserly leave to employees to participate in seminars. An effort was made by the Comptroller General to distinguish between matters of mutual interest and special interest. It is the NFFE's view that all matters pertaining to the employee-management cooperation program, other than internal business of the employee organizations, constitutes matters of mutual interest. Certainly employee-management cooperation does not and should not mean a Government policy of endeavoring to sweat the greatest volume of work out of its employees at the lowest possible wage. Nor should it mean, on the other hand, a union policy of the least work for the highest possible wages. Such propositions are wholly self-serving and contrary to the paramount national interest.

We seek an employee management program which avoids those extremes, so inimical to sound personnel administration and good government. We ask for equal time with management for training, not a restrictive 8 hours per year, as presently doled out in a “welfare State” manner. This should be clearly stipulated in the proposed legislation.

We previously stated that—

The provision for a secret ballot election should be waived only in instances where two conditions are met. First, when a union submits signatures of over 50 percent of all employees in the unit and second if no other union submits a 10 percent showing of interest to challenge that showing of interest. Unions and agencies should be permitted to consolidate units only when employees in those units are given an opportunity to express their views on the matter. If significant opposition to consolidation is expressed, an election, monitored by the Department of Labor should be conducted.

We add some qualification to our previous statement as follows:

We are concerned about phony signatures in cases where there is no intervention. Thus, no election should be required if a greater than 50 percent showing of interest is submitted, and no one intervenes except in an instance where another party challenges the validity of the signatures (even if the party does not intervene). In such an instance, a secret ballot election should be required.

As for consolidations, we should amplify our statement \* \* \* "employees in those units be given an opportunity to express their views on the matter \* \* \*"

What we mean here is not an election but a posting indicating that there has been a request to consolidate units and that any unit members who object should do so by a certain date, including reasons for opposition. The Authority can then weigh the objections and determine whether they are sufficient in number and substance to require an election.

To clarify all of the above, we offer the following as a recommended SOP under the overall recognition question:

Unit hearing will be conducted at the regional level of the FERS Authority. The Authority may be petitioned to review a decision of the regional level but the Authority determination is final. What is important here is taking the unit hearings out of DOL. A unit determination is probably the most important procedure in the field of Federal labor relations and yet, as presently conducted, these questions are resolved by the most inexperienced individuals in the field, the area officers of DOL.

The most important aspect of the recognition section concerns the size of the units.

We provide (1) no recognition will be national in scope, (2) local units shall be presumed to be the appropriate units, and (3) multiunit bargaining will be permitted on a regional basis with an additional provision for supplemental local agreements.

A national or regionwide unit would be permitted if a single union represented every installation within an agency or region. This is far different from permitting a single union with great financial resources to ask for a national unit and thus wipe out all existing contracts. Further, the smaller unions would have difficulty in trying to conduct an effective nationwide campaign.

The only justification for big units is administrative convenience for management and monolithic power for the union. Such an arrangement neither serves the public interest nor the interests of employees in a service-oriented environment.

Concerning administrative convenience, agency management can deal with one union which makes them happy but if the purpose of the Federal labor relations program was to serve the wishes of administrators, we would have no unions at all.

Moreover, we hear a great deal of talk about returning decision-making power to local governments, and people. Implicit in this is the feeling that much of the alienation of modern life results from bigness and an inability to have an impact on decisions that affect our daily lives. We believe our members know what matters are most important to them and we think local management, given a free hand, can work out a mutually beneficial relation with unions at the local level.

The other problem with large units is the power of the union itself. Large national unions do not serve the interests of individual employees but rather become power-political lobbies. While political power is important, strong local units do not minimize national political power and they also restore democratic vitality to the labor movement.

The specter of one union representing all employees in the Federal Government is frightening from two aspects. First it should frighten the Government itself. Second, it does not bode well for unions because with the first threat to shut down, may we state, the Government, Congress will repeal the law permitting us to organize.

#### AGREEMENTS

*Collective bargaining.*—It is important to recognize the manner in which our collective-bargaining provision intermeshes with the concept of strong local units. Collective bargaining at the local level should permit negotiation on all matters affecting working conditions, including contracting out, except for pay, retirement, insurance, leave, and job classifications. Local bargaining should permit coverage on practices and procedures used to implement these last five items. The point here is that local working conditions are the concern of employees and management at that level and they should be permitted to negotiate fully on issues of direct concern to them. The Authority should have final say on contracting out and the unions a right to be heard on said issue.

We have excluded the five mentioned items because these issues are extremely complex and a hundred different agreements on wages, retirement, and job classifications would create an administrative nightmare. I add, we again speak of 70 agencies, including independent agencies, their subdivisions, and area bureaus. We are talking about classification and job pay and other factors under a national type of collective bargaining agreement. Congress would never approve collective bargaining on these matters and the merit system would be destroyed.

*Pay, insurance, retirement, job classification, and leave.*—Congress retains its sole authority to legislate on these issues. But we believe unions are entitled to a more systematic input in these areas. H.R. 10700 does establish a separate advisory board on each of these issues modeled after the Federal Prevailing Rate Advisory Committee. These committees would submit annual reports to the Congress and appropriate committees recommending any desirable changes in legislation. Unions and management would have separate staffs and the unions would have access to all documents in the possession of the Government to be used in preparing recommendations. This will solve a recurring problem we now face—that is the ability to make detailed systematic studies of relevant information in these areas so that we can make informed comprehensive recommendations. For instance, we might recommend that Congress get rid of Blue Cross.

*Board.*—Experience on both the Prevailing Rate Advisory Committee and on the Pay Council behooves me to state that though it may seem to be democratic and participating on the surface, we have found both to be cumbersome and ineffective for timely reaction. We thus recommend the provisions of H.R. 13 as more applicable to the prob-

lem. We, however, offer a substitute for the union or agency shop concept as proposed in section 701(2) of H.R. 13 as follows.

*Fair representation fee election.*—Since the NFFE stress for negotiating is at the local unit level, we of necessity must state the procedures as outlined in section 7107 of H.R. 10700 will also prove unwieldy and tend to advocate national or agency type exclusives.

We recommend the creation of a fair representation fee election. After the certification of an exclusive representative, the exclusive may request an election to determine if employees in the unit must pay a representative fee to the exclusive. This election requires that an absolute majority of the employees in the unit cast an affirmative vote.

The obligation of unit employees, should this election be successful, is a monthly representation fee. However, no one need join the union, pay initiation fees, partake in insurance programs or operate as union members.

If the fair representation fee election is unsuccessful, any employee organization in the unit with 10 percent of the employees is entitled to have dues withheld as a labor organization. This establishes the concept of formal recognition. We believe that this insures democratic process.

In the event such election is successful, after 1 year, a petition filed by 30 percent of the unit employees can require an election to rescind the fair representation fee. Thus, a group with formal recognition can begin to erode a strong union by taking away their fee first and challenging recognition after the group is weakened because of a lack of service to its members.

What we are attempting to do here is recognize the need for unions to sustain themselves when they are required to represent all employees while at the same time insuring that only a strong union which is providing effective representation to all employees will be entitled to this right.

The formal recognition concept is also important to foster union democracy. A minority union, with 10 percent of the employees at an installation, will be able to sustain itself through dues checkoff and make certain that the ins (the majority union) provide effective representation or face a challenge. The competition will be good for employees' interests and will prevent atrophy and unresponsiveness on the part of the unions.

*Arbitration.*—It is argued that disputants fail to bargain seriously and in good faith when an arbitration procedure looms over the deliberations of the parties. Admittedly this can be a problem, but if unions are denied the right to strike they must have some method to compel action by the agencies. The fact is that under the present system there is, in my opinion, a complete lack of good faith by management because, in many cases, they don't care whether they ever complete a contract.

One of the reasons we can live very easily with arbitration is our belief that unless agency management radically alters its attitude, disputes which go before the authority are bound to get objective treatment.

We think it disgraceful that so much time in contract negotiation is consumed by the issue of time on the clock for negotiations and the cost of dues withholding. This is absolutely preposterous. Accord-

ingly we endorse the concept that all negotiating time will be on the clock and dues checkoff will cost nothing. The fact that these issues remain unresolved in 1974 is an indication of the lack of interest the Federal Government has in a vigorous, effective labor movement. Management is permitted to use Government time for all purposes at a terrific cost to the taxpayer and thus use the 40-hour half-time concept as a club to force union negotiators into meaningless agreements. In many cases, management purposely uses all negotiated time in exercising the prenegotiation agreement itself. In fact some are so trained. May I say, I speak from experience. I don't think that anyone spends more time at training centers for management than the NFFE does, because I have seen it in action.

We feel even more strongly about this in instances where an agreement exists. There the agency should be required to make an overwhelming showing at a fact finding hearing that there is a clear need to abrogate the contract provisions.

Actually sections 11 and 12 of the present order invite agency abuse and underline the basic imbalance in the program.

*Federal Labor Relations Board.*—Although the proposed Board in H.R. 10700 does provide a form of summary proceeding, the stress of day-by-day dealing seems to be left with the hierarchy of either management or the unions. We wonder if another Edsel is being created by such a structure. Considering the number of policies and regulations issued by CSC, 70 some odd agencies, and various intermediary levels, we can visualize full-time task forces debating the proverbial angels dancing on the head of a pin. This can result in nothing but time consuming and costly battles with management representatives and unions on interpretations. For purposes of emphasis, may I say, both the Pay Council and Wage Fixing Committee have proven this.

A major problem is the inability of local management to bind itself to a contract. It should be a violation of law to make any unilateral change in regulation, even where no written agreement exists. Thereafter the burden should be on the agency to go to the authority if questioned and the regulation should not be implemented until the case is resolved.

Agencies should delegate this authority to the lowest level with all agreements stating the general prohibitions of sections 7107(a)-(d) as proposed in H.R. 10700. The authority could set up an internal structure to handle the matters as proposed for the Federal Labor Relations Board. Thus only section 7107(i) would become applicable.

#### NEGOTIATION DISPUTES AND IMPASSES

Most authorities outline the major difficulties in resolving bargaining disputes in the Federal sector as follows:

Negotiating deadlines normally force the parties to clarify issues; and, as the deadline approaches, begin to work out an agreement with give and take on both sides.

In the Federal sector there is no meaningful deadline, primarily because the unions do not have the weapon of the strike. Consequently, management is often content to let the negotiations drag on interminably. There is pressure on the union, however, since it is threatened with the loss of dues withholding or a challenge. They sometimes capitulate under the strain, accepting essentially meaningless agreements.



The only pressure on management is the cost of litigation—a weak reed at best.

We do not contend that agencies uniformly refuse to bargain, many do. However a decision to do so is more a matter of their beneficence—not union pressure. If management wishes to be hardnosed, the union is generally hamstrung.

For example, at Keesler Air Force Base, Miss., 37 hours was spent on the ground rules, over 9 months on the contract and even then most of the key provisions were sent either to impasse or to the council on negotiability issues.

Even now we are awaiting Air Force Headquarters analysis of the negotiability/impasse issues.

In the Federal Highway Administration in Vancouver, Wash., after negotiations broke down at the local level, discussions were initiated in Washington to determine the source of the problem. That agency's head of labor relations took the position that he was seeking uniformity in all agreements with activities under his jurisdiction—this was the only reason for not accepting a union proposal.

The present wording of sections 11 and 12 encourages management to avoid meaningful negotiations and consultations on literally every issue raised by the union.

This comes up most often on the issuance of regulations by higher agency authority. In the Sheppard case, the right to consultation on personnel practices and procedures and matters affecting working conditions was made meaningless.

However, in a very recent A/S decision DCASR-No. 372 the Assistant Secretary said:

I reject the contention made by the activities that certification of less than region wide unit would limit the scope of negotiations solely to matters within the delegated discretionary authority of the particular chief of the particular subordinate unit.

Citing United Federation of College Teachers and U.S. Merchant Marine Academy, they stated:

Clearly, the order requires the parties to provide representatives who are empowered to negotiate and to enter into agreements of all matters within the scope of negotiations in the bargaining unit.

Applying that reasoning he states:

Where certain labor relations and personnel policies are established by the DCASR to provide representatives with respect to the units found appropriate herein who are so empowered.

We believe this rationale should apply to the issuance of all policy to this extent:

If there is a negotiated agreement in the unit and the regulation conflicts with the provision of the agreement, the agency should have the burden of negotiating at the local level and if no agreement is reached, the agency must go to the Authority before the regulation can go into effect.

If there is no agreement or the regulation is not in direct conflict with the agreement, consultation must be conducted at the local level before implementation and if the agency refuses to accept union recommendation it must say so in writing and provide reasons. The

union should then have the opportunity to appeal to the Authority as proposed in Congressman Henderson's bill H.R. 10700.

Implementation must not be permitted until consultation or negotiations are complete. To repeat our basic philosophy, we feel little harm is done to the agency and benefits accrue to local unions and activities by granting maximum authority to the local level. Agency review should be conducted on a post audit basis, or in the alternative, a time limit should be set for agency review, at most 30 days.

Post audit review is preferable. The present system underlines to both parties at the local level their relative inability to make decisions concerning their relationship. Agencies have been very slow to approve contracts. In some cases it has taken as long as 6 months to reach accord. This is especially frustrating when the new contract contains provisions of vital importance to the local, provisions which are needed immediately for resolving longstanding problems. To have to hold resolution of these issues in abeyance is demoralizing and frustrating. One of the most pressing problems for national unions is finding local members who have a knowledge of and interest in the development of the Federal labor relations program. So long as these employees feel that they lack the power to affect their relationship with local management without referring most issues to a reviewing authority, this will continue to be a problem. A first step would be the elimination of the intermediate level review while permitting agency headquarters to make only a postaudit review.

Contracts should be effective upon signing by the local parties. Any objections by higher authority should be argued on appeal to the Authority and that should be the only remedy available to the agency. Much of the reason for poor labor relations at local levels is the lack of authority. Why should activity level management, or union officials for that matter, develop as much expertise as possible in labor relations, when both parties know everything is going to be reviewed at a higher level?

Our response to this question must be read in light of our previous reply to the question involving negotiability of agency regulations. It is our view that a more effective labor management relations program will be achieved as more collective bargaining power, and concurrently, more authority and responsibility, is given to the activity level. We submit the fear that chaos in Government organization will result is unfounded; any drift in such a direction can be prevented by the retention of power by agency heads in areas of obvious direct concern to the mission of the agency and the substance of agency policy. Most issues of concern to employees regard not substantive policy questions but the day-to-day difficulties of functioning as an employee in a large bureaucracy. For this reason, we believe negotiated grievance procedures should be employed to resolve disputes of agency regulations.

Typically in informing a local union that a provision must be deleted the agency will cite FPM or agency regulations which are vague and clearly open to varying interpretations. The problem is that presently, unless the union accedes, the agreement remains in limbo unexecuted.

*Scope of bargaining.*—A major bar to expanding the scope of negotiations is the agencies' insistence on issuing overly prescriptive regu-

lations, if not at department level, then at intermediate command, bureau, regional office district, or head office level. Such actions unduly restrict the scope of bargaining at activity level, where the vast majority of negotiations occur.

A good example of this practice concerns the CSC's recent move to broaden the scope of negotiations (reference FPM letter 250-2). To date, we have seen no real evidence to indicate that agencies gave the guidance anything more than a cursory glance. In fact, the vast majority of our local unions have received no consultation regarding the policy areas reflected in FPM. We continue to be confronted with the familiar "not negotiable." For example:

The social security district office manager cannot negotiate on merit promotion procedures, because the regional office establishes the policy.

The BIA School Superintendent cannot negotiate policies on RIF, merit promotion, leave, et cetera, because the area office establishes the policy; and additionally, the Labor Relations Officer at the area office would like all unit agreements under the office to be similar.

The above are only a few of the many examples which could be cited. We feel that the crux of the problem centers upon the lack of meaning given by the Council to the statement:

In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. (Section 11(b), E.O. 11491.)

The now often cited Sheppard Air Force Base case, cut the very heart out of the order insofar as any real intent to prevent unduly restrictive regulations by the agencies and subordinate levels of command.

We urged the Council to review its policy in this area, in light of continuing efforts to unduly restrict negotiations.

We might add that the question in the SAFB case was not whether the agency, and in turn its subordinate commands, had the right to issue regulations, but was whether in so doing, the intent of the Executive order was observed. In the SAFB case, Air Force declared "inoperative" the paragraph of the ATC regulations stating that "it could not be supplemented by ATC bases." To date this has not changed. Thus, the Council in its decision assumed negotiability of some aspects of the merit promotion procedure, while, in fact, the ATC base's overprescription of the command regulations left no negotiability to more than eight large units involving several thousand employees.

We urgently recommended that members of the FLRC and the staff of the Council be assigned as observers in cases of negotiation, unfair labor practice charge, impasses, unit determinations and to review the paper processing and documentation involved in these matters and to review the time frame required for each of the processes. It is apparent to us that the Council and its staff are formulating concepts without benefit of knowledge and experience.

We sincerely hope that the provisions of sections 7110 through 7117 of H.R. 10700 eradicate some of these inequities and endorse same.

CONDUCT OF EMPLOYEE ORGANIZATIONS AND MANAGEMENT

NFFE generally concurs with both the spirit and intent of sections 7109, 7110, and 7115 as prescribed in H.R. 10700. We heartily recommend however that the Authority may order an "agency to discipline a supervisor or official of an agency upon determination of arbitrary, capricious, or otherwise knowing violation of act." This was provided for in section 801 of H.R. 13. Without such a provision, controls become empty shells with toothless digesting taking place. An apology posted on a bulletin board is a meaningless device, permitting repetitive actions. Unions, however, could be subjected to revocation of both dues withholding and even recognition itself.

MISCELLANEOUS PROVISIONS

NFFE concurs with most of the provisions under sections 7108, 7113, 7116, and 7117 but strongly opposes certain provisions of section 7117(a)(2) authorizing voluntary dues allotments to associations of management supervisory employees. We specified our reasons previously. They should be compelled to go through the union procedures to obtain same. This is in truth management subsidy to itself. For similar reasons, we concur with the H.R. 13 proposal—section 1301—that the Bureau of Labor Statistics or the Authority itself maintain the files, data, and publish information to interested parties.

CONCLUSION

Mr. Chairman and members of the subcommittee, we extend our sincerest thanks to you and your capable staff for both the opportunity to present the NFFE viewpoint, and for the many guidelines and references provided. You have identified by the proposed legislation that the efficiency of the Government is not the sole trust of management officials and recognized the true purpose of an employee-management program. You have recognized that efficient administration of the Government is enhanced by orderly and constructive relationships between employee organizations and management officials.

We believe that we have made constructive and forward-looking proposals of the employee-management relations program. They have been hammered out not in an ivory tower or in academic and theoretical discussions but rather on the basis of long, hard, and often frustrating pragmatic experience of more than 57 years. They are the result of our day-to-day, face-to-face dealing with the problems arising out of Executive orders and with too many administrators who show little competence or initiative in handling personnel problems in a complex Government structure. We believe we have married the public interest with merit concepts.

Thus, to our specific proposals presented herein we add a strong and urgent plea to this committee to take whatever steps are within its jurisdiction to impress upon Federal administrators in every department, and at every level of supervision, that employee-management cooperation means just that—and that cooperation to be meaningful must be a two-way street. Unless and until that message takes hold, throughout the Federal service, conflict and frustration inevitably will continue to be the order of the day.

We thus offer as an addendum to our testimony and in rebut to the Civil Service Commission stand, the NFFE's summary and evaluation of the status of employee-management relations on a general agency-by-agency review. Thank you.

I would like Mr. Geller to highlight two points in the addendum.

Mr. HENDERSON. I would consent to the entire addendum being published in the record.

[The statement follows:]

#### ADDENDUM

Prior to a final evaluation of the various bills, H.R. 10700, H.R. 13 and H.R. 9784, we believe it essential to furnish you with our status report and evaluation of the employee-management relationship as they now exist under Executive Order 11491, as amended. You have heard from Chairman Hampton concerning the euphoric and idyllic conditions resulting from the administration of the Executive Order. It is simple to say that the Chairman's facts are slightly awry and his conclusions equally bent. I believe it would really serve the purposes of this Committee to learn of the situation as it really is. It might be appropriate to begin with the Air Force by way of an illustration.

Keesler Air Force Base, located in Mississippi, and our Local at that station have been engaged in negotiations of an agreement for almost two years. A few months ago, they signed an interim agreement which put aside the really significant issues that are still pending, which number about 50. Representative of our Local have spent approximately 155 hours each in negotiations without reaching an agreement. As I understand it, Secretary of State Kissinger spent approximately 130 hours in negotiations on the Mid-East dispute between Syria and Israel, a matter, I believe, more complicated than negotiations between the management of the station and our representatives. In fact, it took 55 hours of negotiations to arrive at the ground rules.

At Vandenberg Air Force Base a similar situation exists where negotiations there have been in progress for one year and a half. The President of our Local, as in the case of Keesler Air Force Base, has exhausted his administrative leave and is using his own time in dealing with management which has no incentive for reaching an agreement. In both of these situations as well as elsewhere in the country, officials of the Locals have been subjected to recurring harassment as reflected in poor evaluations and denial of justly-earned promotions. All of these Locals have utilized the so-called appellate system which Chairman Hampton praises as useful mechanisms operating under the present Order.

Conditions at Army and Navy stations are not much different. At Fort Monmouth, New Jersey, for example, the President of our Local previously received recurring outstanding evaluations. Accelerating activity in representing the Local organization has resulted not only in the denial of the outstanding rating but in a questioning of the satisfactory nature of his performance.

In the Department of Navy at Pascagoula, Mississippi, the local command summarily told our Local representatives that they could not receive a promotion unless and until they signed a mobility statement. Our Local representatives and others suffered denial of promotion due to this arbitrary and vicious denial of employee freedom and, while the appellate system worked in this instance, it took more than a year. There is serious doubt whether the loss of promotion opportunity even if applied retroactively will alleviate the enormous harm caused by the failure to dispense prompt justice under an employee-management system.

In the Department of Transportation, and in particular in the Federal Aviation Administration, our Local at the Naval Aviation Federal Experimental Center has filed many unfair labor practice charges against its management. The Department of Labor after much foot-dragging, sustained virtually all of the charges after about a year of consideration. New charges and additional charges have been made. The bad conditions complained of have not been altered. The poor employee-management relationships persist.

In the Federal Highway Administration in Vancouver, Washington, the management has arbitrarily withdrawn dues withholding privileges, refused to negotiate on a new agreement and harasses the President of our Local in the arrangement of meeting dates and in insolent and arrogant treatment towards him.

In the Department of Commerce, the management at the Bureau of Census has arbitrarily contracted out work previously performed by employees in

Jeffersonville, Indiana, all the while advising the employees that such work would be performed by the government employees as heretofore. The Department of Commerce and the Bureau of Census and the local station never bothered to consult with the Local.

In the Department of Interior, our organization faces an enormous burden in representing membership, particularly in the Bureau of Indian Affairs. The administration has an avowed policy of contracting out virtually all of the operations now performed by the Bureau. This will be administered by the various tribes. Our organization has for the past three years made reasonable recommendations to the Bureau and to the Secretary of Interior for the placement and consideration of those thousands of dedicated employees in the Bureau of Indian Affairs to be placed in other civil service positions. We brought an unfair labor practice charge against the Secretary of the Interior, all to no avail. Although a similar case brought at a lower level in Albuquerque held in our favor. However, its application resulted in no change. This points up the inherent weakness of the current nominal leadership of the Federal Labor Relations Council which is headed up by the Chairman of the Civil Service Commission. It is obvious that an unfair labor practice charge brought against a Cabinet level member could hardly be sustained by an official at the Assistant Secretary of Labor rank or by the Chairman of the Civil Service Commission. This illustration, in particular, demonstrates the necessity for an employee-management authority head who may not have Cabinet rank, but whose status and importance and authority would be of such nature as to overrule the decision of the Cabinet Member or the Director of the Office of Management and Budget with regard to conditions of employment of Federal employees.

Much has been said in an effort to sidetrack the legislative move concerning the question as to the employment. It is obvious that both the President and the Congress and the Cabinet Members and individual Administration officials are the representatives of the government in the employer-employee relationship.

The Veterans Administration, whose management activities have come under increasing question, has consistently disregarded recommendations made by our organization in the national consultation role concerning its promotion policies and in reassigning employees to other parts of the country in an arbitrary fashion. The VA employs a nomadic personnel policy system which requires employees to move about the country in order to receive promotions. This has resulted in promotion of many less qualified employees, having a resulting deterioration in efficiency as well as destroying the morale of career employees who aspire to higher positions. In Austin, Texas, our Local has filed eight unfair labor practice charges resulting in extended hearings without benefit of reconciliation or adjustment. Management has repeatedly challenged the charges made by the Local while at the same time acknowledging deficiencies in its program to process checks for veterans under the various veterans benefits programs.

In the Department of Agriculture, our organization brought an unfair labor practice charge against the Secretary based on a failure to consult in connection with the reorganization of the Forest Service. This was one instance where the Department recognized the error of its ways and adopted many of the recommended suggestions of our organization. On the other hand, in a similar instance involving the failure to consult regarding reductions in force in the Agricultural Stabilization and Conservation Service Office in Des Moines, Iowa, a reduction in force was announced eliminating several positions, on which the local activity failed to consult with the organization. As a result, this matter was handled as an unfair labor practice charge long pending with the Department of Labor. The Department of Agriculture blames each higher level of the agricultural hierarchy for the failure to consult, denying employees the opportunity of knowing why actions affecting them are kept secret and denying them the opportunity to challenge the appropriateness of the action.

The Department of Health, Education and Welfare instituted a new system for collecting and distributing dues withholding to unions holding appropriate recognition under the present Order. This resulted in enormous loss of funds and members because of an anti-union and unnecessary bureaucratic approach to a matter which had heretofore worked reasonably well. This failure to remit funds properly owing to the organization resulted in a communication to the Secretary of Health, Education and Welfare requesting prompt correction and including the possibility of a law suit against the Secretary for improper denial and holding of funds due our organization. This matter continues to be unresolved even though the Department's Finance Office has made some belated efforts to resolve the problem.

Mr. GELLER. We took, particularly, the Air Force, for example. As noted in our appendix, the time required for negotiating a prenegotiation agreement took some 55 hours and to negotiate this has consumed about 155 hours.

If my memory serves me right, Secretary Kissinger spent 130 hours in the rather complex problem involving the Mideast. This, I think, highlights the difficulty in especially this agency and many of the other agencies.

The record of frustration is not found merely in the Air Force. It occurs in the other agencies, the military agencies, the Department of Transportation and one serious concern we have is that we find the leaders of our organizations, the presidents, are being subjected to unwarranted abuse, denied promotion opportunities.

This is underscored, getting back to the Air Force, in at least seven or eight stations, ranging from Vandenberg Air Force Base to Keesler Air Force Base to Plattsburg Air Force Base to Homestead Air Force Base and you can go around the country and find these oppressive measures being taken by the Air Force, the Department of Transportation, and I would like to just point out in particular, the station near Atlantic City known as the National Aviation Federal Experimental Center, where our organization has initiated perhaps 10 unfair practice charges and in virtually every instance, the Department of Labor has substantiated them in its findings.

The activity of that management continues apace. The charges continue. The system just does not work and it does not stop the inevitable abuse that exists in the Federal service.

These are just—one point I want to stress, apart from the current problems that we face, is the extreme importance of having as head of the authority a man or men of substantial authority. In that connection, we commend the chairman, in particular, for the new dollar-ceiling type of control imposed on the Department of Defense.

This does not completely solve the awesome problem occurring every day of the contracting out of governmental activities and we urge this authority be delegated substantial power to review these contracting out problems, especially to make judgments concerning the OMB circular A-76.

In that connection, we are faced immediately with the serious problem of possible dislocation of 10,000 or 15,000 employees in the Bureau of Indian Affairs. The Bureau and Department of Interior have announced that beginning July 1, a very active program to contract out much of the work being performed by Federal employees to the various tribes.

This concerns us very much. Just highlighting that suggestion, Mr. Chairman, and I will close with that, is that this authority the chairman or whatever he is called, have with regard to personnel determination should be the same standing and authority as the Cabinet level, the rank now existing in the Cabinet.

Dr. WOLKOMIR. That concludes our testimony, Mr. Chairman. Thank you very much.

Mr. HENDERSON. Dr. Wolkomir, with respect to the supervisors under the proposed legislation, referring to the top of page 8 of your statement, you speak of supervisors who can reasonably be expected to confront a conflict. Then, you go on to say only conflicts of interest,

in fact. Could you clarify these two thoughts and let us have your views on how we should treat supervisors who are in a position to give the appearance of a conflict of interest?

Dr. WOLKOMIR. Under the present concept, of course, and the interpretation by the Federal Labor Relations Council, any man who performs an evaluation on another individual is a supervisor. The distinction is between what is supervisor and what is management and which individual is dealing in labor management on the policy-making level.

This is at the core of our problem. When we speak of conflict of interest—I can exemplify—when I was president of my own local for 15 years, even under the original executive order, my boss never saw a conflict of interest, even though I was his adviser, in doing my union work.

He had enough faith in the integrity of the individual. I was merely rendering advice as a staff representative. I wasn't making policy. He made the policy. We made recommendations to him as staff members and there is a large distinction between the man who serves on staff and has a function of making recommendation to the policymaker and the man who makes the policy. This is the grave distinction, I believe, in the determination of the distinction between a so-called management individual and the individual who is merely an administrator or renders suggestions in the staff function.

Mr. HENDERSON. On page 10, in paragraph (d) of your statement, you say that agencies should be required to petition the authority if they want to exclude certain employees. Rather than the petition being initiated by the union, what would be your views on a procedure which would permit the agency to exclude by a labor organization?

Dr. WOLKOMIR. Well, we are reversing the procedure. What we are saying is when we apply for recognition under our petition, we must include the individuals who will be covered by that particular unit. The unit has a responsibility to include the definition of the unit. If the agency disagrees, then they should have the burden of proof as to why they want to exclude the individuals and let the authority make a determination. We are reversing the procedure.

Mr. HENDERSON. Would you object strongly if we reversed it the other way?

Mr. GELLER. We would have no objection. As a practical matter, it would originate that way, if it would clarify that the question of the security or investigative work could be subject to determination and review by authority, the organization, the union would petition the agency and start the process moving. We have no objection.

Mr. HENDERSON. On page 12 of your statement, you recommend a definition for supervisor. Using your suggested definition, would a person who can settle a grievance or could say yes or no to an employee's requesting 3 or 4 weeks' vacation, be a supervisor?

Dr. WOLKOMIR. Not necessarily. This is merely the delegation of working up a work schedule or a relief schedule. That doesn't make that individual management. He administers certain paper forms.

Mr. HENDERSON. Do you have problems with your suggestion with regard to supervisors in the Federal law as it relates to and is compared to the definition of supervisor or the rights of supervisors in the private sector? Let me put it another way. Admittedly, I have



tended to feel that the line of drawing supervisors in the Government sector should be the same as in the private sector. Is that necessarily the right place to draw the line?

Dr. WOLKOMIR. Unfortunately, I must say no. The demarcation in the private sector is contingent on the contract they sign. At a series of Federal Bar Association seminars—I don't know why I inherit the panel involving supervisors and conflicts of interest—in a study of about 28 contracts we see no clear-cut definition of what is a supervisor or management in the private sector.

Mr. HENDERSON. Isn't the law clear on that, though? Once you determine who is a supervisor, the law is clear, isn't it? Part of my fear with regard to drafting this legislation would be that if the legislation defined supervisor differently from that—and the effects thereof—than the National Labor Relations Act, we would get a cry from the private sector of this country that we are going back to the situation before the enactment of section 14-A of the NLRA.

Dr. WOLKOMIR. If there is a possibility of a definition from the private sector, we would prefer that definition to the type of definition we have now. We would prefer the private sector type of definition to the present one in existence. Does that answer your question?

Mr. HENDERSON. I think it does, because it is responsive to the concern I have that if we could clearly demonstrate to the private sector we were not reversing a trend or we were doing something in the public sector that could read to reverse all of the present law—

Mr. GELLER. Mr. Chairman, may I address myself to that. I think the problem doesn't arise in terms of the definition. The pragmatic approach to it is who has been included or excluded in the private sector. We would accept that kind of relationship. But in the Federal Government, this structure is much larger, even than the typical private industry arrangement and you have supervisor upon supervisor. In the smaller stations, there are three, four, or five levels of supervisors. We feel in the situation, the first level supervisor is properly includable within the unit.

You find in the private sector, for example, a foreman, perhaps in the construction operation. He is a member of the unit and union, with rather substantial authority to fire, hire, et cetera. He is included in the unit.

But the definition of a supervisor in the National Labor Relations Act is a rather strict one. So, it is observed in the breach. And it is not—and I think if we parallel that definition, that is a danger in incorporating large chunks of the National Labor Relations Act in the statutory law. There are those dangers. Within the Federal Government, we have found that in any deficit size station, a first line supervisor just has the most limited authority.

Mr. HENDERSON. Dr. Wolkomir, you advocate the binding of guards together. To the extent guards are required to enforce agencies' rules and regulations with respect to other employees, would we not have a delicate or difficult relationship when a guard found himself enforcing a rule against a Federal employee who belonged to the same unit or organization?

Dr. WOLKOMIR. We presently handle dozens of grievances involving union members against union members. To this day, we have never found it created any kind of feeling in terms of affecting the security

of the job they have. In no single instance since we have had exclusion of guards, have we come to this.

Mr. HENDERSON. I will defer to Mr. Ford.

Mr. FORD. I want to move along. We have a time problem. At the beginning of your statement on page 2, you say, "Others may argue that the withdrawing of services, individually or collectively from a public employer is not committing an illegal act. In truth, we find that a strike in the public sector is in fact a strike against themselves where public employees are involved."

Later on, on page 5, in pointing out the problems in dealing with the National Labor Relations in the Federal sector, you say in the second paragraph of that section, "With no attempt to be ludicrous, we have experienced for 12 years an attempt to emulate private sector climates in the Federal sector without providing the teeth, institution, or even the ultimate weapons so essential to true collective bargaining in the private sector."

I assume relevant weapons are strikes?

Dr. WOLKOMIR. Right.

Mr. FORD. Back on page 34 where you are talking about the negotiations and disputes and impasses, you talk about the problem of setting a deadline that puts pressure on the respective parties to try to get a solution to the problem.

Your paragraph b says, "In the Federal sector, there is no meaningful deadline, primarily because the unions do not have the weapon of the strike."

I seem to find inconsistency with the philosophical statement that a public employee is striking against himself and I took it to mean you are against public employees having a right to strike. Later, I see you rely or accept the proposition that without the right to strike, you are kidding yourselves if you think you can have meaningful labor relations. As a matter of philosophy, which side are you on?

Dr. WOLKOMIR. It may seem inconsistent but it isn't. We mandated that we are against the strike in the public sector. In fact, we are the only union left that does retain the no-strike clause in our constitution. There is nothing inconsistent in believing a public employee should not strike against the public. He is part of the public.

Second, in terms of the use of the ultimate weapon—

Mr. FORD. I find it inconsistent. What do you mean, nothing inconsistent that the public employee is part of the public and, therefore, doesn't have the right to strike?

Dr. WOLKOMIR. He is part of the public. He is striking against himself. Who is he striking against? Ultimately, it is against the taxpayer, regardless of the supervisor or agency he is working for. In terms of relationship of what we are saying, we do not have the ultimate weapon; we don't have it. And until the laws says we do have it, what we are saying is concessions must be made to the employee in the public sector because he doesn't have the ultimate weapon and this is the contention under which we are proclaiming a need for the liberalization of collective bargaining aspects of our relations with management in the public sector. I have made the statement that because we don't have the right to strike, we should get paid more.

We should be compensated for not having that right.

Mr. Ford. On the one hand, you say you are entitled to special concession because you don't have the right to strike but on the other hand, you don't want the right to strike. I think it will be hard to sell the principle to Congress—we are not asking for this right but if you deprive us of it, we want something special in return—

Dr. WOLKOMIR. We need a special institution to handle labor management relations in return, not what you have given us in the way of executive order. That institution should be oriented toward the public sector concept of organization. I can't visualize any union sitting down and negotiating classification. I can't see any union sitting down with the diverse bureaucracy we have and collectively bargaining on every issue that every agency has.

Mr. Ford. I am sorry to hear you say that because I think we will have to find a way to make that possible, because the public employees are now responsible for the overwhelming majority of time loss. When you lose it, one way or the other, the taxpayer is involved, whether or not it is industrial or public operation.

My own feeling, looking at it is it happens because we allow jungle warfare to continue and there are no rules. There is no way to call a strike legally and, therefore, there is no legal mechanism to deal with it. There is no definition of how you go about striking or what is a proper strike or how you can conclude it, because striking is illegal and it prohibits anybody from officially setting the rules.

As a matter of fact, when the public strikes contrary to law occur, everybody gets together fast and fixes a kangaroo court type of arrangement and winks at the law from both sides and tries to get to some agreement.

The vast majority of public strikes in this country are illegal. There are an infinitesimal number of public strikes in the last 13 years that were technically legal. There have been an infinitesimal number of strikes that have not been successful as a weapon in the hands of the employee against the public and employer, whether it has been the city rubbish collectors, schoolteachers, postmen or whoever.

I guess the postal strike is the outstanding example in the Federal Government.

Dr. WOLKOMIR. May I answer you, Mr. Ford, with reference—

Mr. Ford. I am not trying to persuade you to be for the right to strike. I am suggesting you present a dilemma if you draw this kind of barrier.

Mr. GELLER. Congressman Ford, I think that is the challenge to us and the committee to find a constructive alternative to the strike. The United Steel Workers proudly proclaim along with the companies, about the no-strike provision. I think the strike is passé. It may have and does have its place in the private sector. That is why we are suggesting very special authority and delegation of responsibility to the authority that is mentioned in virtually all the bills presented and give them special power.

Mr. Ford. I can't agree with you that the industry, as a vehicle, is going to have difficulty as a unit with the industrial worker with only that industry. I don't know; I think that has the national contract. I believe, one, that has the national contract. It is a kind of practical committee for employers. And the entire industry without regard to any other industry has reached the state of where it may be working

toward an alternative. We are a long way from that in any part of the public sector. And the facts seem to indicate that each year there is a degree or a geometrical indication of public employees who resort to strike, or whatever you want to call it, as a way of bringing about pressure to settle agreements, or to get recognition for their labor organizations.

Most of the long strikes are, in fact, recognition strikes, labor recognition strikes. So the fact seems to suggest that public employees who get a paycheck from the Federal Government are going to live in the community with public employees at their units who are being integrated right into the strike in one fashion or another. It just seems to me naive on the part of either labor or management.

Mr. GELLER. But I think you are oversimplifying this when you are talking about the proliferation of public strikes in the Federal Government. In the past few years, there have not been any strikes. So it may be true in counties and municipalities that we are talking about, but the law for the Federal legislation accordingly does not have it. Because a public employee is a part of the public, and, therefore, he strikes against himself. He can be a state taxpayer, or a local taxpayer, or a common taxpayer, or a school taxpayer, but he is not in the same relationship to his Government as an employee would be as a Federal taxpayer.

Mr. HENDERSON. I almost got the impression that you are saying that it is all right for teachers to begin to strike, but not all right for the public.

Dr. WOLKOMIR. It just so happens that it is that way because they are very successful in this sort of illegal strike—if I may call it that. It is akin to the fact that the Secretary of HUD was picked up bodily and thrown out of his office. And that's how minority groups got what they wanted. And it is akin to the Indians walking into the BIA to burn the building down and get what they wanted. That doesn't make it right.

We could use this sort of tactic and say, "The only way to get any action today is to burn those damn buildings down."

Mr. HENDERSON. That's why we passed the National Labor Relations Act, because we didn't want that to happen. And since its been in effect, we have had very little compared to what the conditions were in this country in the 1920's and in the very early 1930's. That is the kind of violence that brought about the National Labor Relations Act.

Dr. WOLKOMIR. We have no argument with that, with the ultimate weapon in the private sector. But let's be realistic. I believe that if you were to present the right to strike as opposed by both your legislation and H.R. 13 today in Congress, we would not get anything, absolutely nothing.

Let's experiment with an institution as recommended by H.R. 10700. And let's see how we can go on this count.

Mr. FORD. I may say that you just mentioned my bill for the first time today. And I suppose I am a little bit disappointed.

Dr. WOLKOMIR. My apology.

Mr. FORD. And it is in the very final statement. And you don't give me any advice about how I can improve H.R. 9874. I wonder if, after today, you could take a few minutes and look it over.

Dr. WOLKOMIR. We have, Congressman Ford, except that we find

that H.R. 13, as a bill, is so akin to the elements that we discussed, even to the elements in the definition of which we speak, that on H.R. 13 we are really speaking about both pieces of legislation.

Mr. Ford. On behalf of Mr. Brasco, I will take exception for both of us. I just wanted to ask you one quick thing.

You felt, or your description of what you can perceive as exclusive bargaining makes this somewhat puzzling to me.

On page 21, you talk about encouraging the bare knuckle activity. But later you set up a system that seems to me to guarantee that you are going to have constant conflict between competing unions. I think it is a fact sometimes that competition between unions sometimes gets very emotional. And it is rougher than some people would prefer to have it become. But you suggest that after an organization such as your own achieved complete collective bargaining exclusive recognition from the unit, whatever that unit might be, that any other organization that has 10 percent or more of the employees willing to sign up can have the right to have dues checked off. Now, doesn't this guarantee that you are going to have a multiplicity of organizations continuing a fight within a unit to gain recognition?

Now this would destroy the major industries in this country if we allowed that to happen to the private sector. My God, the automobiles would go out of business in 1 year if you let every other organization that has tried one way or another to get into their bailiwick and come up with 10 percent and get the dues checked off and so on.

Dr. WOLKOMIR. That's exactly our point. We are not in industry. We are in the service oriented concept.

Mr. Ford. You have expressed great concern, as I think you should, and certainly as Congress should, for the stability in these relationships from the standpoint of our obligation to the public as the formal employee representing the public as the employer of public employees. And I am saying to you, that from the standpoint from the employees to private enterprise that they would regard the kind of procedure you have here as a very irresponsible threat to ever having labor peace. And I cannot understand, on the one hand, the great concern you show for labor strife. That is, one organization against the other, or union strike, as you prefer to characterize it.

And then, on the other hand, you suggest that there should be completely imbedded in the legislation, a method to keep this kind of competition alive.

Dr. WOLKOMIR. Will you buy the idea that after a national election that if the majority of the Democrats are elected to Congress, we should throw out every Republican and only Democrats speak for the Congress?

Mr. Ford. No. We have another election in 2 years, and let them make that choice. And under the National Labor Relations Act when union A gets exclusive bargaining, they have protection of that for 1 year.

At the end of that year, you can have another election, like we do for Congress, and maybe the other union will win somehow.

Dr. WOLKOMIR. When the restrictions on that outlined today are so obvious no one even has an opportunity to interject themselves when there is an exclusion of recognition today—none at all. You can't even get to the membership. You have got to meet them in bars, and in saloons, and in basements, outside installations, if you are going to provoke any kind of interest.

regional, and not at the, necessarily, national levels because the people that we are concerned with are at the local level. And we are concerned with their immediate needs and condition.

I am not going to sit in Washington, D.C. and negotiate a contract for the Government employees across the land. I'd be crazy if I tried it. We are dealing with some different concepts.

We are not an industry producing an end-item. We are dealing with services, services of all kinds. And that's why we need something different.

Mr. HENDERSON. Thank you very much, Dr. Wolkomir.

We have some other questions the staff has prepared, and I am sure Mr. Ford has. We will ask the staff to coordinate them for you to get into the record. I will ask that the staff may insert those for the record at this point.

[The following information was furnished:]

1. We do not subscribe to the notion that an employee should be limited to one grievance procedure. At present all agencies have a grievance procedure which permits the filing of a grievance on a wide variety of matters. These matters may also be the subject of a negotiated grievance procedure. There may, however, be deficiencies or gaps in either the agency or the negotiated procedure. Because there may be gaps or deficiencies in the procedures, it is our belief that since allow him to present his grievance in an orderly fashion. Otherwise, an employee complaints, the employee should be permitted to use that procedure which will allow him to present his grievance in an orderly fashion. Otherwise, an employee with a legitimate grievance could be prevented from filing a grievance simply because of a lack of procedure.

2. Language such as mandatory payment or equivalent fees as a condition of employment are something different than the fair share fee that we advocate. Our requirement for achieving the fair share fee status is a severe one in that it requires a majority of the employees in a unit to vote for such fee. We believe that the result of such an election reflects a democratic determination.

The CSC objection that fee is contrary to merit principles is without merit. Advancement will continue to be based on the merit system. Indeed, we would suggest our concept will improve the merit system in that it will provide greater resources thereby allowing us to police the system. Political appointees to career appointments belie the belief of a pure merit system. We think the system will be improved.

The CSC's objection also fails to consider the fact that merit principles are already circumscribed by policies and regulations which prevent the true functioning of the merit principle. For example, many agencies impose a mobility requirement on their employees as a condition for advancement. All agencies have certain "goals" or "quotas" superimposed over their employment practices which are the antithesis of merit.

We would suggest that if "goals" or mobility requirements can be imposed without damage to the merit system, so too can a fair share fee.

3. We believe that in order for meaningful negotiation to take place all matters within the discretion of the head of the agency should be on the table for negotiation. This would wipe out any broad range of unnecessary regulations which are issued unilaterally by the various agencies. We do not challenge the ultimate right of management to hire, fire, promote or the accomplishing of its programs and missions. However, we believe that the method and policies adopted to carry out these functions and responsibilities must include the opportunity for negotiation on those matters which could affect the conditions of employment.

Our statement that management rights could not be bargained away was intended in the context of the preceding statement. That is, certain fundamental matters such as the mission of the agency, which is established by the Congress, cannot be bargained away. The basic charter of the agency is a matter which only the Congress could alter. Similarly, the manner in which the agency accomplishes its mission are matters which should not be bargained away.

4. In our suggestion for compulsory arbitration, we would give free rein to the arbitrator to negotiate or impose an appropriate determination in a negotiation. It does not necessarily require the suggestive method for settlement. It

If there are people who are there who are interested in what they believe, I say they should have a right just like the Republican has a right as a minority party to express themselves and have a voice in Congress. We completely eradicate this right if any union may lose an election.

Mr. Ford. The largest single union in the country is the Teamsters. And it would come as a great shock to them if you are to tell them that it is impossible for an outside organization to go in where somebody else has exclusive bargaining rights to win an election.

Because that's one of the ways that they have become the largest single labor organization in the country.

Dr. WOLKOMIR. But I don't want to take any of your time in discussing the methods that they have used to come creeping into the Federal sector. And that's what we want to keep out of the Federal sector.

Mr. GELLER. I think it is important to note, Congressman, that this is not a novel idea. This is the situation as it existed before the change in the Executive order. And your fears about what would happen just didn't happen when it was in effect.

Dr. WOLKOMIR. Seven years. It was in effect 7 years and it was wiped out only because of the pressure of whom? The monolithic union.

Mr. Ford. Well, presumably, whatever we ended up with, whether it was Mr. Henderson's bill, or Mr. Brasco's or a combination of mine and theirs, I have no idea. We are going to have a much more effective bargaining system than either Executive order provided. And that's why the question of exclusive bargaining rights will be important.

You now have exclusive bargaining rights and the meaning of it provides a situation where you have relative peace.

Once the people with exclusive bargaining rights really have the ability to act like a labor union representing their employees in all aspects of their labor management relationships, then you can have real competition for that privilege. You may not have had the incentive in the past.

Dr. WOLKOMIR. But we refuse to recognize the private sector concept of unionization. And I think this is where we differ, basically, in our original premise.

Mr. Ford. I don't suggest that it is an idyllic system. I am simply suggesting that it doesn't make much sense for us to pretend that the last 40 years of history in labor management and the National Labor Relations Act doesn't exist, and hasn't produced for our economy a stable labor management situation that is absolutely essential to a country as diverse as this one is. And our Federal Government represents the national diversity, and we are going to have to find a way to wrestle with this problem, and with some of the wisdom that was displayed by Congress back in 1935.

Dr. WOLKOMIR. Well, we don't want to go back to the 1930 labor movement either. But, based upon our experience under the National Labor Relations Act as amended, let's not also inherit their mistakes. Let's, through these years, benefit by the mistakes, not incorporate them into the public sector. That is all we are saying.

And, I believe that's why there is so much rhetoric in the testimony. And that's why we want representatives at the local level, not at the

does not require that the arbitrator be from outside the Government. As a matter of fact, we would encourage the establishment of federally employed arbitrators or the utilization of Administrative Law Judges. The important ingredient of settlement of impasses is to provide a speedy resolution within the Government Labor Management structure.

5. The simple method for broadening the scope of bargaining is to permit unions to negotiate on all matters that are discretionary to the agency.

On those matters that are regulated by the Civil Service Commission, a Board consisting of an equal number of Management and Union officials should sit regularly to negotiate on the issuance of the Civil Service Commission regulations implementing laws and Executive Orders. This Board would be chaired by a full time employee agreeable to both management and the employee organization groups.

6. Agency systems of intra-management communication and consultation with supervisors or supervisory associations should be eliminated since they appear to take on the identification of an organized relationship.

Management has ample opportunity to train supervisors in whatever philosophy it wishes.

Mr. HENDERSON. We appreciate your appearance today, and I think that your presentation has been in your usual, very excellent, thought provoking manner. And I appreciate it very much.

Dr. WOLKOMIR. And thank you very much.

Mr. HENDERSON. Our next witnesses are Mr. Vincent L. Connery, the national president of the National Treasury Employees Union and Mr. Ralph Flynn, president, Coalition of American Public Employees. It is our pleasure to welcome you gentlemen this morning. You may introduce your associates and then proceed.

Mr. FLYNN. Thank you very much. Well, first I would like to thank you for giving us the opportunity to appear before this committee, and also to commend the committee for taking the effort to consider such an important issue of national policy.

#### **STATEMENT OF RALPH J. FLYNN, PRESIDENT, COALITION OF AMERICAN PUBLIC EMPLOYEES**

Mr. FLYNN. The Coalition of American Public Employees wishes to go on record in support of H.R. 9784, introduced by Mr. Ford.

The coalition consists of the National Education Association, the American Federation of State, County, and Municipal Employees (AFL-CIO), and the National Treasury Employees Union. These organizations represent 4 million public employees at the Federal, State, and local levels of government with a combined membership in excess of 2 million public employees.

Our interest in sound collective bargaining legislation for Federal employees is threefold. First, as a matter of equity and sound public policy, we believe the right of public employees to collective bargaining should be guaranteed in law and not Executive order as administrative fiat. Second, the unions within our coalition have determined that they need collective bargaining legislation to meet the needs of their members in Federal service because what exists under the Executive order and the patch-up remedies proposed to head off legislation are inadequate. Third, because of the ripple effect caused by the Federal Government's treatment and relationship with its own employees on public employees at the State and local levels.

Among the major nations of the Western World, the United States stands out as the only one without legislated rights for its public em-



ployees to bargain collectively with government. Nations and s far less stable than ours and with only a fraction of our resoure shown that government can bargain collectively with its employ without jeopardizing its public trust. If any nation has the maturity and confidence in its own institutions to deal with its employees as responsible adults, it should be our Nation. And in our society, collective bargaining is the mechanism we use to determine employment relations among adults.

The most depressing quality in Chairman Hampton's extended statement to this committee was its tone of insecurity. Fear, if you will, that our Federal structure is a house of cards that could topple under pressure from its organized employees. I believe that if our system can survive Vietnam, the drug culture, and Watergate, we have nothing to fear from a collective bargaining law. The concerns expressed in Commissioner Hampton's statement read like a compilation of all of the hobgoblins which have been raised in State legislatures across the country in the last 10 years—sovereignty, the impact of collective bargaining agreements on taxation, and the ultimate clincher—the need for uninterrupted public service.

Not one of these terrible concerns has been realized where a State government has enacted public employee collective bargaining legislation.

Commissioner Hampton is on more familiar ground when he balks at the proposed collective bargaining legislation because of:

\* \* \* something we dare not lose sight of. Efficiency, costs, performance, mission accomplishment, management's capacity to make essential decisions and to manage—have to be accounted for to the public.

I am sure that every manager since time immemorial has uttered the same plea when faced with the specter of collective bargaining. But while such a position is predictable, it must be rejected. For although Alfred Sloane and Henry Ford said much the same thing in the mid-1930's, both G.M. and Ford would now concede that, overall, collective bargaining has been an asset to the industry.

The coalition is in support of H.R. 9784 because we believe that this is the best bill under consideration to give full collective-bargaining rights to Federal employees, and incidentally, we do believe it is quite distinct from H.R. 13, as well as H.R. 10700.

Perhaps the most striking feature of the bill is its provisions for resolving impasse. We believe that public unions and public management have a moral duty to exhaust every mediative remedy in their efforts to reach a settlement. However, should these good faith efforts fail, we believe that public employees have the right to strike and the privilege to waive that right in favor of binding arbitration, should they so desire. The impasse procedures in H.R. 9784 provide for mediation, but should mediation fail, the union would move on into fact-finding, retaining its right to strike, or opt for binding arbitration and waive its right to strike in that negotiation. The option for binding arbitration as contained in H.R. 9784 is an extension of the right to strike; the union formally chooses not to exercise its right—strike, in return for an acceptable alternative—binding arbitration.

There is nothing bizarre or even untried in this mechanism to try to accommodate the right of public employees to strike with the fact that public employees would often prefer to go to binding arbitration

rather than strike. Since 1967, Canada, under its Public Service Staff Relations Act, has utilized substantially the same procedure for impasse resolution.

In April of 1973, the Public Service Staff Relations Board of Canada, under the direction of its Chairman, Mr. Finkelman, was ordered by Parliament to conduct a study of the act and to make recommendations. Between March and May of this year, Mr. Finkelman delivered to the Government a three-volume assessment of the 7-year experience under the act with recommended changes to improve the law. Significantly, there is no recommendation to eliminate the strike/binding arbitration option.

Any lingering doubt about the need for legal protection of Federal employees' rights has been dispelled in the recent lawsuit won by the National Treasury Employees Union to secure backpay for all Federal employees. Had NTEU nothing stronger to lean on than administrative fiat, there would have been no basis for a lawsuit.

The coalition believes that collective-bargaining legislation for Federal employees is an idea whose time has come. And H.R. 9784 would best do the job.

Thank you.

Mr. HENDERSON. All right, Mr. Connery, would you like to proceed at this time?

**STATEMENT OF VINCENT L. CONNERY, NATIONAL PRESIDENT,  
NATIONAL TREASURY EMPLOYEES UNION**

Mr. CONNERY. Mr. Chairman, in addition to my statement, we have prepared a rather comprehensive position paper, which I would appreciate being introduced into the record in conjunction with my statement.

Mr. HENDERSON. All right, Mr. Connery, with regard to your position paper, it will certainly be received. I would like for the committee to momentarily reserve the right to decide whether or not it should be printed in full in the hearings. But it will be very helpful to us.

It is obvious, in just looking at the index, that it would be very helpful to us.

Is there any other highlight of your position that you would like to take a moment or two to comment on?

Mr. CONNERY. Well, I would say, Mr. Chairman, that our absolute support for H.R. 9784 is paramount in my statement. We believe it constructive in all sectors, and it would cure the wrongs, which currently exist in the present program.

I also go to great lengths to take issue in my statement with previous remarks of Chairman Hampton of the Civil Service Commission. And I would call attention to those areas in my statement.

Mr. HENDERSON. Your prepared statement will appear at this point in the record.

[The statement referred to follows:]

**PREPARED STATEMENT OF VINCENT L. CONNERY, NATIONAL PRESIDENT,  
NATIONAL TREASURY EMPLOYEES UNION**

My name is Vincent L. Connery. I am President of the National Treasury Employees Union, formerly the National Association of Internal Revenue Employees. Our union represents over 60,000 employees of the Treasury Department,

including more than 90 percent of those Internal Revenue Service employees who are eligible to be represented by a union.

We appreciate this opportunity to present our views on the current labor relations program in the Federal government and the need for collective bargaining legislation. To adequately deal with this vital and complex subject requires a great deal of time. We do not wish to belabor this Subcommittee, however, with a lengthy oral presentation. We have prepared an exhaustive analysis of the present program and detailed recommendations for the future of collective bargaining in the Federal sector which, I would now ask, be inserted into the hearing record.

Since its inception twelve years ago, the Federal labor relations program has been governed by Executive Orders; first, Executive Order 10988 and then Executive Order 11491 as amended in 1971 by Executive Order 11616. Some say that for more than a decade we have been engaged in a "noble experiment" which has proven so successful that it should remain as such for years to come. With the misplaced enthusiasm of a proud parent, these propagators of the present program proclaim that because the child has flourished it should never become a man.

We do not believe, as Chairman Robert E. Hampton of the Civil Service Commission attempted to convince the Subcommittee, that the success of a labor relations program can be measured by contrived statistics extolling the number of employees represented by unions and the diversity of provisions in existing collective bargaining agreements. The true test must be the responsiveness of the program to its stated goals. We must judge the program on the basis of whether or not it is fulfilling the promises and expectations that it has set forth for employees and their union representatives.

To do this for the Federal sector, we need only look to the preamble of Executive Order 11491, which states, in part that "the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment." When the state of the present program is compared to this fundamental precept it is not difficult to discern how little we have progressed over the past twelve years.

Despite its declarations of high purpose, the Executive Order has failed to promote or even foster true "bilateralism" in the Federal sector. Faced with the specter of legislation, management unilaterally produced Executive Order 11491, which precludes any effective voice for Federal employees and their union representatives despite its verbiage designed to give the impression of bilateralism trumpeted by its salesman, Mr. Hampton.

By its terms, the Executive Order prevents employees from negotiating in areas that have a significant impact on their job. For example, it gives management the complete right to determine areas of negotiability, to reject the terms of a collective bargaining contract even though it has been agreed upon by both parties, and to decide which employees in the same office or shop are to be covered by the agreement. Such needless roadblocks on Federal collective bargaining are but part of the strangling restrictions being sold to you by Chairman Hampton as a model of bilateralism.

Even in the minor and relatively unimportant areas which remain subject to five Order 11491, which states, in part, that "the well-being of employees and their unions have been so narrowly restricted as to render much of the negotiation process a sham. Unions have been denied the right to effectively negotiate promotion plans, assignments of work, access to information necessary to process grievances, performance evaluations, and many other matters necessary to have any real impact in a bargaining process. The result, of course, as explained in detail in our accompanying position paper, is that the rights of management reign supreme.

Chairman Hampton, in appearing before this Subcommittee, sought to give the impression of a wide range of negotiations taking place in the Federal sector by citing the fact that there are 1,904 agreements in the Federal government and by presenting a laundry list of subjects contained in the contracts. What Chairman Hampton did not disclose is that the substance of these negotiations are extremely limited and have no real effect on the management-ordained personnel regulations previously in existence at the agency or facility.

In essence, then, there is no bilateralism, there is no true employee participation in the "formulation and implementation of personnel policies and practices" as envisioned in the beginning some twelve long years ago. Bureaucracy has triumphed to date. Federal managers have clearly up to now, thwarted the will

of Congress, as the rest of us have always understood it, and the rights of Federal employees to negotiate on significant matters "affecting the conditions of their employment."

This should occasion no surprise; the results flow directly from the built-in unbalance of the Order relative to the basic rights of the parties. The original vision of bilateralism and unbiased third-party adjudication lies in tatters, the management controls every aspect of the elaborate, but meaningless, negotiation rituals.

The Executive Order provides for a Federal Labor Relations Council composed of the Chairman of the Civil Service Commission who serves as the Chairman of the Council and in many respects is the Council, the Director of the Office of Management and Budget, and the Secretary of Labor. It is the responsibility of the Council to review decisions of the Assistant Secretary of Labor for Labor Management Relations and to determine major policy issues concerning the labor relations program in the Federal sector, including negotiability disputes. In effect, the Council serves as the equivalent to the National Labor Relations Board in the private sector.

In his testimony before this Subcommittee, Civil Service Commission Chairman Hampton described this system as providing "third-party machinery for the resolution of disputes." Such a description, however, is not only misleading, it borders on the absurd. "Third-party machinery" to most of us means that a disinterested party reviews an action and makes an independent evaluation and decision; certainly, no one can claim, the Council members to be disinterested parties since each is a high-ranking management official accountable directly to the President.

It is impossible for these men to change their managerial hat with the hat of an impartial arbitrator in labor-management disputes simply by changing their title for a few moments a month. To have to rely upon agency heads for unbiased decision-making in union controversies with other agency officials is as disheartening to the unions as it would be for Federal managers to have their differences with unions adjudicated by a council of three union presidents.

Even the Assistant Secretary, who is charged with the responsibility for making initial determinations in representation cases, unfair labor practice charges, and grievability and standard of conduct determinations is not an unbiased third-party. How can he perform his job in an independent manner when he is appointed by, and is directly responsible to, one of three men who sit on the appellate body which reviews all of his actions? In addition, the same situation exists with the Assistant Secretary of Labor as with the members of the Council: he is a manager who must carry out the managerial policies of the Secretary of Labor and the President. If this is third-party machinery, or objective third-party adjudication in any sense of the word, we would prefer being left to the mercy of Mao's Red Guard.

No one is taken aback that Chairman Hampton would foresee no "demonstrated need" for a major change in the present program. Certainly, Chairman Hampton, having played a major role in the genesis of Executive Order 11491, has accomplished, thus far, the purposes of the present Administration in effectively throttling the development of real collective bargaining and reasonable labor relations in the Federal government.

Needless to say, for bilateralism and unbiased third-party decision-making to ever have any real meaning in the Federal sector, there must be a complete alteration of the present program. As a minimum, employees must be not only guaranteed but provided impartial and objective decision-making in their disputes with management, and even more important, they must be allowed to meaningfully participate through a system of collective bargaining in all matters, including the negotiation of pay and fringe benefits, which are of vital concern to them.

In explaining the allegedly wide scope of bargaining and "bilateralism" in the Federal sector, Chairman Hampton described the present discussions for determining wages for over 2 million General Schedule and military employees as a "close first cousin to collective bargaining." This is not the case. If it were, such bargaining would have been abandoned years ago as unfair to both parties.

For example, I have served as one of three union Presidents who are members of the Federal Employees Pay Council for three years and, during this time, neither the President nor his Agent, who happens to be Mr. Hampton together with the Director of the Office of Management and Budget, have not made any effort to establish a "bilateral" relationship with the Pay Council. The discussions between the Pay Council and the Agent, rather than a "close first cousin

to collective bargaining," more closely resemble Greek theatre, where the fatal flaws of the system foredoom the result to predictable failure.

To fully appreciate the widespread unilateralism in the present pay-setting system, one need only look at the structure of the Federal Pay Comparability Act of 1970 and the parties involved. The President's chief budget and management officers serve as the Administration's representatives in discussions with the Council. Before they begin, the budget for the next fiscal year has already been determined as has the pay raise which is to be accorded General Schedule and military employees. Because there is no requirement for "true negotiations" between the Agent and the Council, any recommendation by the Council which would increase the pre-determined figure beyond that already budgeted, has been automatically rejected by Mr. Hampton and his associates.

Once the discussions between the Council and the Agent draw to a close, the Agent then submits its recommendation for the October adjustment to the President, as does the Council and the President's Advisory Committee on Federal Pay. However, the President is not bound by the recommendations of any of the parties and since it is his Agents, which are not only charged with submitting pay recommendations under the Comparability Act but also with determining the Federal payroll in their capacities as Director of the Office of Management and Budget and Chairman of the Civil Service Commission, it comes as a surprise to no one as to which yearly report he has opted to implement.

This system then has been doomed from the beginning. The President has been in complete and total control of the pay-setting process. To describe this almost dictatorial authority of the President and his Agents as a "close first cousin" to anything but totalitarianism is literary license gone wild.

When Executive Order 10988 was issued in 1962, it was hailed by many as the public employee "Magna Carta." At that time, only the State of Wisconsin had enacted legislation providing collective bargaining rights to public employees. Today, more than a decade later, thirty-three states have adopted legislation requiring public employers to engage in collective bargaining with all or some of its public employees. Thirteen states authorize collective bargaining by statute, Attorney General opinion, or court decision. Only nine states have failed to provide any collective bargaining rights for public employees. It is truly ironic that the alleged "model employer" who spawned so much legislative activity among the states remain itself, twelve years later, with no legislation.

Of all the nations in the free world, our government is the only one that has denied its workers the right to engage in full collective bargaining. Federal employees have been excluded from virtually all of the benefits of a collective bargaining system that has enabled untold millions of public and private sector workers in this and other countries to prosper and grow. As things are, Federal employees are prohibited by statute and Executive Order from negotiating on pay, classification, workweek, retirement benefits, health and life insurance, and a host of other bread-and-butter issues.

They are also statutorily forbidden from exercising the right to strike or even to seek third-party binding arbitration in such matters as disciplinary actions. And, as we stated earlier in our testimony, even within those areas which are subject to collective bargaining, Federal employees have been precluded by the Executive Order and the decisions of the Federal Labor Relations Council from engaging in full negotiations. To me, this is more a specter of a Federal workforce in chains than the fantasy of bilateralism painted by Chairman Hampton.

For nearly forty years, private sector workers have enjoyed the protections, rights, and benefits under a collective bargaining system that has given substance to the noble principals laid down by our Founding Fathers. Postal employees, school teachers, policemen, firemen, sanitation workers, and other civil servants have been granted the right to engage in full collective bargaining. There is absolutely no justification for denying to Federal employees that which has been accorded to all others. What is necessary and beneficial to the workers in private industry and in the states is similarly so to his Federal counterpart.

We are all too familiar with the preachings of those purveyors of doom and gloom who assert, among other things, that collective bargaining in the Federal sector would have a devastating impact on the "merit" system, would jeopardize a Federal managers ability to manage in the public interest, and would interfere with the "need for uninterrupted public service." We deal with these arguments at length in our position paper and to them, we say at this time that years of experience in the private sector and in the states have proven that these phantoms are more aberrational than real.

These, and many other arguments against collective bargaining, have been raised by private and public sector management, as well as in state legislatures across the country, and not one of their onerous predictions has ever been realized. In point of fact, collective bargaining has proven as beneficial to industrial and state management as it has to the worker. There is no evidence whatsoever to show that the experience gained in the private and public sectors is not applicable to the Federal government or that the problems in the Federal sector are so unique as to require further "experimentation" under Executive Orders before legislation.

Executive Orders may be fine for short-range interim programs, but they are ill suited to serve as the governing doctrine for a program as long-range and important as the Federal labor relations program. What is needed is a program grounded on statute which will provide Federal employees with full collective bargaining rights, including the right to strike.

The total unilateral arbitrary control of the program may be seen in an occurrence just yesterday. Based upon Section 22 of the Executive Order, NTEU negotiated clauses in all its collective bargaining agreements which provides for advisory arbitration of adverse actions. This clause has been good for the government, for its decisions for the first time have been subjected to outside review rather than review by another arm of management in the form of the Civil Service Commission. Now the President of the United States, at the insistence of the CSC has issued a new Executive Order which has the effect of abolishing the negotiated advisory arbitration clauses covering 70,000 employees which we represent. Thus, we see when the CSC is even peripherally challenged, the President of the United States unilaterally comes to its assistance to the detriment of thousands of employees.

Employees must be statutorily guaranteed the right to negotiate on matters of substance which are vital to their job rights and security; matters not preempted from the bargaining table by law and administrative action. They must also be assured that their disputes with management will be adjudicated by an impartial body completely independent of Federal management, and charged with administering the Federal labor relations program.

None of these are unrealistic goals. Congress now has before it a bill which would grant Federal employees each of these rights. H.R. 9784 would remove Federal employees from the cave of unilateral and paternalistic management decisionmaking and permit them to join their public and private sector counterparts in an era of enlightened bilateralism. We fully support H.R. 9784. Certainly, it would considerably improve the present labor relations program in the Federal government.

H.R. 9784 provides for the creation of an independent Federal Employees Labor Relations Board which is to consist of five members appointed by the President with the consent of the Senate. Much like the National Labor Relations Board, the Federal Board would be vested with the responsibility for administering the labor relations program in the Federal government and with "prevent(ing) any person from engaging in any conduct in violation of this Act." In effect, it would combine the present functions of the Assistant Secretary of Labor for Labor-Management Relations and the Federal Labor Relations Council, but, most importantly, it would remove them from the tenacles of management domination.

To no one's surprise, Chairman Hampton strenuously objected to the creation of an independent authority when he testified before this Subcommittee. Since, as matters stand, he and two other management officials are in total control of the machinery under the present program, his position, while understandable, is far from fair. Yet, if fairness and equity to employees rather than management domination is to be the criteria, then it is an absolute necessity for the governing authority in a labor-management relations program to be completely independent of both unions and management.

Each of the bills now before Congress call for the creation of an independent authority to administer a Federal labor relations statute. Not one of them would retain the present umbilical cord which so closely links the Federal Labor Relations Council and the Assistant Secretary to Federal management. We believe that the Federal Employees Labor Relations Board as set forth in H.R. 9784 is manifestly the most logical and practical method of running the Federal program in an orderly and constructive fashion without prejudice to either party.

In addition to establishing an independent governing authority, H.R. 9784 provides for full collective bargaining on all matters of concern to Federal

employees, including the right to negotiate on wages and fringe benefits. The negotiations must take place at the level of exclusive recognition. In contrast, H.R. 10700, which is presently being considered by this Subcommittee, seriously limits the scope of bargaining by prohibiting negotiations on wages and fringe benefits and by maintaining, with one ineffective exception, the management rights clause contained in Executive Order 11491.

This sole exception concerns the issuance of changes in personnel policies by agencies other than the Defense Department. H.R. 10700 establishes, in this regard, an elaborate procedure for discussing changes in personnel policies. If the agency head seeks to change a personnel policy, then negotiations take place; however, if the policy issuance is from the Civil Service Commission or covers more than one agency, it is referred to the Federal Labor Relations Board composed of five representatives from the unions, five representatives from management, and a Chairman appointed by the Chairman of the Civil Service Commission. The Board would then meet to determine the merits of the proposal for change.

We believe that the elaborate procedure contained in H.R. 10700 for considering changes in personnel policies falls far short of employee participation in matters which affect them. Employees band together in collective action and appoint specific individuals to represent their interests. Under the procedure outlined in H.R. 10700, their designated representatives may or may not represent them on the Board. And even if on the Board, their vote may be overruled by management or other unions. This procedure is totally unfair and undemocratic. Elected representatives should be allowed to perform their function of representing the interests of their constituents.

In addition, we cannot support H.R. 10700 for it would simply perpetuate many of the inequities that undermine the present labor-relations program. Not only does this bill forbid negotiations on wages and fringe benefits, the expansive management rights clause would exclude from collective bargaining almost every matter of importance to Federal employees. The continuation of such a clause merely increases employee frustration over their inability to have any voice in matters which directly affect them.

There is considerable experience in the private sector as well as in the states which warrants the conclusion that the place for a management rights clause lies in a collective bargaining agreement itself and not in an inflexible statute. Certainly, this is so, since subjects which were not considered appropriate for collective bargaining in 1935 are now common at collective bargaining tables. Our world is much too complex and fast-changing to limit the subject of collective bargaining by a statutory management rights clause which could very well be outdated within the year.

The Congress itself has recognized this in previous legislation. The Postal Reorganization Act sets forth a specific list of management rights but goes on to provide that each of these rights are subject to alteration through collective bargaining. Quite rightly, Congress concluded in this Act that collective bargaining rather than statutorily mandated management rights is the appropriate method for ensuring problem solving.

In his testimony before this Subcommittee, Chairman Hampton raised the serious question of how could the Congress turn over the authority for economic benefits, classification, and other conditions of employment to 3400 separate bargaining units. He characterized the alleged problem of having Federal employees who perform identical functions, but yet would receive different pay and fringe benefits, as an ominous threat to the public and the power of Congress. However, a close analysis of this issue, as set forth in our position paper reveals that Chairman Hampton's "problem" is totally illusory and like the tinman in the Wizard of Oz—has neither substance nor heart.

What irony that Chairman Hampton should be the man to bring this up! The Commission, itself, from the very beginning directed Federal agencies not to recognize large units and, in fact, ordered a policy which would insure small, fragmented units of recognition. We, and other Federal employee unions, have attempted to consolidate small units of recognition into larger units so that we could effectively negotiate with management. However, we were denied this right by Mr. Hampton who now seeks to use this as an issue to preclude full negotiations in the Federal sector.

Be that as it may, the proliferation of bargaining units has not deterred unit negotiations in the states, municipalities, or even in the Federally controlled Tennessee Valley Authority. As a matter of fact, the State of Michigan, which

has a very sophisticated labor relations program covering public employees, presently has 3500 collective bargaining contracts in 1400 units of government. No state or municipality which engages in unit bargaining has collapsed because of the existence of numerous collective bargaining units. Nor has any state legislature resisted legislation on the basis that it would be unable to conduct negotiations on the unit level.

H.R. 9784 defines an appropriate bargaining unit in the same terms as the present Executive Order: community of interests, effective dealings, and efficiency of operations. This definition strikes a reasonable balance between units which are so large that individuals cannot participate in the bargaining process and units which are so small that they are impossible to administer. It recognizes that like-situated employees will better understand their own problems and press their unique need as well as the desire for direct participation which causes employees to form their own organization rather than become part of a larger organization in which they may feel themselves strangers.

We do not believe that the Federal government would in any way be harmed because Federal employees performing essentially the same work chose to receive different pay and fringe benefits. After all, the essence of collective bargaining is participation; and if employees in one unit decide to negotiate working conditions and pay which differ from that of another group of employees, we think they should be allowed to do so.

For example, employees in Del City, Oklahoma, may be satisfied with a lower salary and a higher employee contribution to a pension plan than employees in New York City who wish a higher salary and a lower employer contribution. Also, employees who must drive their own vehicles on government business may desire a higher mileage reimbursement rate and a lower salary than employees who remain strictly in the office. The examples are endless, but the point is clear: unit bargaining recognizes diversity and the divergent needs of employees; whereas, employee participation on a government-wide basis may very well fail to satisfy the needs of any of the employees.

Chairman Hampton also claims that the superseding of existing laws and regulations by a collective bargaining statute which permits full negotiations in all areas of concern to employees would create havoc within the Federal government. Once again, he cites no proof of this claim. In fact, numerous state legislatures have faced and resolved this problem as did the Congress itself in the Postal Reorganization Act. It is apparent that Chairman Hampton is not familiar with either the provisions or experience of the Postal Reorganization Act which contains protective provisions for the continuance of compensation and benefits and other terms and conditions of employment in effect prior to the implementation date of the law.

The Postal Reorganization Act provides that compensation, benefits, and terms and conditions of employment will continue to apply unless changed through collective bargaining, with the proviso that any change in fringe benefits "must result in a program of fringe benefits which is not less favorable on the whole than the fringe benefits in effect on the effective date of the law." In addition, Postal employees continue to be covered under the Federal Employees Compensation Act and the Civil Service Retirement system.

Thus, the question of superseding was resolved in the Postal Reorganization Act by retaining some statutes in total such as the Civil Service Retirement Act and the Federal workman's compensation law, while other statutes were established as the base from which negotiations could begin. We believe that this is a fair and just procedure and would strongly recommend that it be incorporated into the Federal labor relations statute.

Included in H.R. 9784 is a provision establishing an agency shop, whereby, those who elect not to join a union must pay a fee equivalent to the amount of members' dues. The agency shop is a widely accepted doctrine in the private sector and we know of no good reason why it should not be authorized in the Federal sector.

As a problem-solving mechanism, collective bargaining assumes that unions are free to act, and have the wherewithal to act. A union must have the security and policy making stability that flow from the fact that policy and strategy decisions affecting all employees in the bargaining unit have been sanctioned by a union membership that is coextensive with the bargaining unit. And it must have the financial stability resulting when the costs entailed in exercising its responsibilities are shared by all employees in that unit.



Like Chairman Hampton, opponents of the concept of an agency shop have traditionally charged that it is discriminatory, that it disrupts the "merit principal," and that it violates an employee's right to work. These specious arguments are dealt with at length in our position paper. It is sufficient to say here that when viewed against court decisions and a realistic appraisal of working conditions in the Federal sector, they prove to be just as groundless as other charges which have been levelled against full collective bargaining in the Federal sector.

One of the most nefarious provisions in H.R. 10700 stipulates that although a union has exclusive recognition in a unit it is merely "entitled to represent and bargain collectively for employees in the unit." This clause has been interpreted by the sponsor of H.R. 10700 to mean that a union could negotiate a collective bargaining agreement covering only members. We are convinced that this provision would lead to great instability and completely undermine the collective bargaining process. All an agency need do is conduct long and expensive negotiations for the benefit of union members and then grant the same benefits to non-members through regulation. This portion of H.R. 10700 could have the effect of discouraging membership in unions and ending all union activity in the Federal government.

Coupled with the expanded right of negotiation must be the right to strike. For the past several years, the incidence of strikes by public employees has been very much on the increase. Experience has taught us that the hoary adage that strikes are intolerable merely because of the public nature of government work is no longer acceptable. Strikes by Federal employees are both thinkable and tolerable. Appeals to a rather amorphous "public interest" can no longer sustain a blanket prohibition against any strikes, under any circumstances, by any class of Federal employees. The public interest does not support such a prohibition; nor does the public itself. This is evinced quite clearly from the experience of the letter carriers and the air traffic controllers.

To permit Federal employees the right to strike would not open the floodgates to wholesale work stoppages. All experience in the states has proven otherwise. In those states which have granted public employees the right to strike, the incidence of strikes has greatly diminished. Nor need the right to strike invite disruption of vital affairs of state. Even in the private sector the right to strike is not absolute; it is subject to regulation. Strikes may be delayed on an appropriate showing and enjoined where they threaten a bona fide national emergency.

The strike provision in H.R. 9784 builds on the experience of the states and, most particularly, the experience of the Canadian government. H.R. 9784 provides that either party may declare an impasse to exist and request the Federal Mediation and Conciliation Service to appoint a mediator. If the mediator is subsequently unable to resolve the outstanding issues within fifteen days, the parties would select a fact-finder with the power to make findings of fact and to recommend terms of settlement. Before the fact-finder's report is issued, the union would decide whether the recommendations are to be binding or only advisory.

If the recommendations are binding, the unions would be prohibited from engaging in a strike. If only advisory, the unions could strike. However, the employer may obtain an injunction against the strike if it "poses a clear and present danger to the public health or safety which in all relevant circumstances it is in the best public interest to prevent." We believe that the right to strike as provided in H.R. 9784 is fair and equitable to both employees and management while at the same time protecting the public interest.

In describing the Canadian system in a report issued by a Subcommittee of the House Post Office and Civil Service Committee, Congressman Charles A. Wilson stated:

The visit to Canada clearly showed the success of the Canadian law. The net result is more responsive management and more responsible union leadership. In Canada this system has proven to be a realistic and effective method of promoting equality between labor and management while guarding against capricious, lengthy, and debilitating strikes.

The Italian, German, and French Constitutions guarantee the right of public employees to strike. Sweden, Norway, and Denmark authorize such by statute. In Latin America, the right to strike by government employees is recognized by most countries. Mexico, our closest neighbor, has the right to strike by constitutional amendment. In fact, the only two modern industrialized nations that prohibit their government employees from engaging

in lawful strikes are the United States of America and Russia. In fact, two of our own States, Hawaii, and Pennsylvania, have a limited right to strike for State and local employees.

There are many arguments both for and against the right to strike, but as Judge Wright said in a district court decision involving postal employees: "It is by no means clear to me that the right to strike is not fundamental. A union that never strikes, or which can never make a credible threat to strike, may wither away to ineffectiveness."

The arguments against granting the right to strike to Federal employees are grounded in sand. Its antagonists consider that Federal employees owe a special duty to the sovereign and that a strike is a heretic action against His Majesty. They also argue that the Federal government, unlike private industry, performs essential functions that cannot be disrupted; that there is lacking in the government a profit motive which forces the public employer into an unequal bargaining posture; and that if public employees have the right to strike they can exert disproportionate pressure in the political arena.

We believe that a careful analysis of these arguments will prove them each to be specious at best. For example, a truckers strike, which is legal, could have a far more damaging effect on our economy than a strike among government printers. Economic and market restraints have the same effect in controlling public sector strikes as they do in the private sector. In both instances, employees are faced with the loss of wages and the possibility of their work being contracted out. And, we all know, that private sector unions are just as active, if not more so, in the legislative process than are public sector unions.

In sum, H.R. 9784 would grant Federal employees the same rights and benefits that have been accorded the overwhelming majority of public and private sector workers. Federal employees have been discriminated against for far too long. They are ready and fully prepared for true negotiations on all issues that affect their interests. Now is the time to bring full collective bargaining and impartial decision-making in union-management disputes into the Federal sector.

On behalf of the National Treasury Employees Union, I appreciate this opportunity to share our views with the Congress. If there are any questions, I will be happy to answer them at this time.

#### POSITION PAPER

(Submitted in Conjunction With the Statement of Vincent L. Connery, National President, National Treasury Employees Union, Before the House Committee on Post Office and Civil Service Subcommittee on Manpower and Civil Service)

#### I. INTRODUCTION

The 1962 Executive Order system of labor relations in the federal sector instituted by President Kennedy was a jerry-built system initiated to diffuse the pressure for collective bargaining legislation for federal employees building in Congress. Executive Order 10988 provided for exclusive representation for employees and total management control with no review of agency actions by independent parties. Executive Order 11491 continued the basic policy.

Jerry-built systems are by their nature systems hastily put together to solve a problem with the intent of later producing a permanent, well designed product. It has been twelve long years since the present system was put on the road. The system now has lived far beyond its expected temporary life and desperately needs to be recalled not for modification or alteration but for a final rest.

When Executive Order 10988 came into existence, it was hailed by many as the public employee "Magna Carta." At that time only Wisconsin had legislation concerning public employees. Subsequent to the 1962 Executive Order, Connecticut, Delaware, Massachusetts and Michigan passed legislation in 1965.<sup>1</sup> Today thirty-three states have legislation covering public employees, which requires public employers to engage in collective bargaining with all or some public employees.<sup>2</sup> Thirteen states authorized collective bargaining by statute, Attorney

<sup>1</sup> Connecticut P.A. No. 159 L. 1965; Delaware H.B. 249, 1965; Mass. Acts Ch. 564 and Ch. 763 No. 2; Michigan: MCLA Sec. 423.201-216, Mich. Stat. Ann. Sec. 17.455(1)-(16); P.A. 1965 No. 379.

<sup>2</sup> Alaska (Teachers, Public Employees); California (Local Employees, State Employees, Teachers, Firefighters); Los Angeles has its own ordinance as do some other California municipalities; Connecticut (Municipal Employees, Teachers); Delaware (Public Employ-

General Opinion or court decision for some or all public employees.<sup>3</sup> Only nine states have no legislation.<sup>4</sup> It is truly ironic that the alleged "model employer" who spawned so much legislative activity remains itself 12 years later with no legislation.

It is now even becoming apparent to some government officials that the time has come for a system of labor relations based upon legislation.<sup>5</sup> Only through legislation can the multitude of problems resulting from the present system be resolved. Further patching up of the old system would be a futile act.

## II. THE RELATIONSHIP OF THE FEDERAL GOVERNMENT TO ITS EMPLOYEES IS NOT SO UNIQUE AS TO PRECLUDE LEGISLATION

Chairman Hampton stated before this Subcommittee that the federal government is so unique as an employer that past collective bargaining experience is not applicable:

Some critics of the Federal labor-relations program favor, it seems, a wholesale accommodation of public employment practices and policies to collective bargaining as it has evolved in the private sector in the last 40 years. This is an unrealistic approach, as will be recognized from the following discussion.

Chairman Hampton then goes on to point out that the "merit" system, the size and diversity of the federal government, the right of unions to lobby for legislative changes, the right of consultation with the Civil Service Commission, the fact that federal managers are neutral in election campaigns, the fact that a government service by definition may not be interrupted, and the obligation of a federal manager to manage efficiently all show that the federal government is so unique that legislation cannot work.

A cursory analysis of the factors cited reveals that Chairman Hampton failed to recognize the lessons of the private sector and totally ignored the experience of the states.

Certainly a manager of a private sector concern has no less obligation to the stockholders to manage as effectively and efficiently as a federal manager. And every state which has enacted legislation has considered the question of merit, the question of lobbying as a substitute for collective bargaining, the question of strikes by public employees, and the existing neutrality of managers.<sup>6</sup> Yet only nine states do not have laws.

ees, Teachers); District of Columbia (All District Employees); Florida (Firefighters); Georgia (Firefighters in cities over 20,000); Hawaii (All Public Employees); Idaho (Firefighters, Teachers); Illinois (State Employees—by Executive Order); Indiana (Teachers); Kansas (Public Employees, Teachers); Kentucky (Firefighters, Police); Maine (All Public Employees except State Employees); Maryland (Public School Teachers—Baltimore County); Massachusetts (All Public Employees); Michigan (All Public Employees except State Employees); Minnesota (All Public Employees); Missouri (All Nurses, Teachers, School Principals); Nebraska (All Public Employees, Teachers); Nevada (All Local Government Employees); New Hampshire (State Employees, Non-Professional State University Employees, Police); New Jersey (All Employees—Public and Private); New York (All Public Employees); North Dakota (All Public Employees Teachers); Oklahoma (Police, Firefighters, Municipal Employees, School Employees); Oregon (All Public Employees); Pennsylvania (Public Employees, Police, Firefighters); Rhode Island (State Employees, Police, Municipal Employees, Firefighters, Teachers); South Dakota (State and Municipal Employees, Police, Firefighters); Vermont (State Employees, State Colleges, Municipal, including Police, Firefighters, Teachers); Washington (Local Government Employees, Public School Teachers, Community College Faculty, State Universities, State Employees); Wisconsin (State Employees, Local Government Employees); and Wyoming (Firefighters). For an excellent historical summary, see: *Project: Collective Bargaining and Politics in Public Employment*, 190 *UCLA L. Rev.* 803.

<sup>3</sup> Alabama (Firefighters); Arkansas (State, Local); Georgia\* (Teachers); Idaho\* (Local Government); Illinois\* (Local Government); Indiana (All Employees); Iowa (All Employees); Kentucky\* (State, Local); Missouri\* (Teachers); New Mexico (State Employees); North Dakota\* (All but Teachers); Utah (State); and Virginia (All Employees). States indicated by an asterisk (\*) require collective bargaining for some employees. See note 2, *supra*.

<sup>4</sup> Arizona, Colorado, Louisiana (Public employers are permitted, but not required, to grant dues checkoff); Mississippi; North Carolina; Ohio; South Carolina; Tennessee and West Virginia.

<sup>5</sup> In a speech to the Society For Labor Relations Professionals the Director of the Federal Mediation and Conciliation Service stated: "I believe that most of the workers who have toiled in the vineyards of the federal sector since 1961 deserve the right to have a viable law." 541 *Government Employees Relations Report* (GERR) A-11, February 11, 1974.

<sup>6</sup> New York: *Governor's Committee (Taylor) on Public Employee Relations* (1966). Michigan: *Report to Governor Romney by Advisory Committee on Public Employee Relations* (1967). Pennsylvania: *Report and Recommendations of Governor's Commission to Revise the Public Employee Law of Pennsylvania* (1968). California: *Final Report of the Assembly Advisory Council on Public Employee Relations* (March 15, 1973). Illinois:

There is no evidence to show that the experience gained in the private and public sector is not applicable or that the problems in the Federal sector are so unique as to require further experimentation before legislation.

We have now had more than fourteen years of experience with laws governing public sector labor relations in various states, and almost twenty years if we count earlier statements of policy such as the New York City Executive Order. Similarly, we have had twelve years of experience under an Executive Order system which has undergone three revisions. It should be recalled that the Wagner Act was passed after only three years of "experience" with the laissez-faire approach embodied in the Norris-LaGuardia Act and nine years after the passage of the Railway Labor Act. In addition, twelve years of experience under the Wagner Act apparently provided a sufficient basis for a comprehensive overhaul of national labor policy in the Taft-Hartley Act.

We have enough experience for a basis of action.

### III. THE NEED FOR LEGISLATION IS DEMONSTRATED THROUGH AN EXAMINATION OF THE PRESENT LABOR-MANAGEMENT RELATIONS PROGRAM IN THE FEDERAL SECTOR

#### A. THERE EXISTS NO CREDIBLE THIRD PARTY REVIEW SYSTEM OF AGENCY, EMPLOYEE, OR UNION ACTIONS IN THE FEDERAL SECTOR

The present Executive Order system provides for a Federal Labor Relations Council composed of the Chairman of the Civil Service Commission who serves as the Chairman of the Council, the Director of the Office of Management and Budget, and the Secretary of Labor. It is the responsibility of the Council essentially to review decisions of the Assistant Secretary of Labor and to make major policy pronouncements concerning the labor relations program in the federal sector. Thus, the Federal Labor Relations Council serves as the equivalent of the National Labor Relations Board in the private sector.

Chairman Hampton described this system as providing "third-party machinery for the resolution of disputes and establishes a central authority to set major policy." However, this system cannot be characterized as third party. "Third party" review means that someone other than the participants in the fray reviews the actions and makes an independent evaluation and decision.

Chairman Hampton cannot be characterized as "third party." As Chairman of the Civil Service Commission he is responsible for the overall management of the federal workforce; he is the President's chief managerial consultant concerning the personnel policies to be effectuated in the federal government. He is a super-manager. The Director of the Office of Management and Budget certainly cannot be considered an "independent." He is responsible for the financial integrity of the President's programs. If the decision costs money, the representative of the Office of Management and Budget can hardly be expected to view the matter with other than a jaundiced eye. The Secretary of Labor might be considered to be independent or perhaps even prejudiced against the "management philosophy" because of his position. However, that is pure myth. The Secretary of Labor is appointed by the President and as such is responsible for carrying out the policies of the administration. He is not appointed for a set period of years; he is appointed at the pleasure of the President and, therefore, can be removed at the pleasure of the President. This type of arrangement does not lend itself to independent thinking, evaluation and decision making.

The inherent conflicts of interest are further highlighted by Section 25 of the Order which requires the Civil Service Commission and the Office of Management and Budget to establish and maintain programs for policy guidance concerning labor relations matters to agencies. Thus, we have the Chairman of the CSC and OMB rendering decisions as Council members on one day, and then issuing directives to managers on how the decision may be implemented most efficiently; or how the impact of the decision may be minimized.

The Federal Labor Relations Council is composed of managers reviewing the decisions of other managers. There is no independence, and may not fairly be characterized as "third party." The impact of such a situation is obvious: the decisions of the Council lack credibility. There exists no expectation that the Council decisions will reflect an objective approach toward employees; and no one is disappointed.

*Report and Recommendations: Governor's Advisory Commission on Labor Management Policy on Public Employees (1967). See, generally, Stieber, Public Employee Unionism: Structure, Growth, Policy, Brookings Institution (1973); Barrett, Governmental Response to Public Unionism and the Recognition of Employee Rights, 51 Oregon Law Review 113 (1971).*

In the matter of *Federal Employees Metal Trades Council of Charleston*, FLRC No. 73A-7 (5/23/73), the union submitted a proposal which would have given them the right merely to review all standards used in the formulation of merit promotion procedures, including certain qualification guides issued by the Civil Service Commission. The agency declared the proposal non-negotiable because of its confidential nature. The Council then wrote to the Chairman of the Civil Service Commission concerning access to the information. The CSC responded that the information was "confidential." The Council, without more, sustained the position of the agency and refused to even examine the validity or necessity of maintaining the information as confidential. In other words, the Council allowed information essential to the proper determination of promotion policies to be withheld from employees.

There exists ample precedent in logic and in law for a different result. The NLRB long ago established the policy that the full disclosure of information aided the conduct of negotiations and increased the acceptability of the negotiating process.<sup>7</sup> In a case directly analogous, the Court of Appeals upheld a decision by the NLRB that the employer had unlawfully refused to bargain when it refused to furnish information concerning the classification of jobs. *NLRB v. Beverage-Air Co.*, 402 F.2d 411; 69 LRRM 2369 (1968). The Court noted that it is a well established rule that the employer is required to supply information relevant to the bargaining issues if requested to do so. However, the Council apparently assumes, without explanation, that forcing the conduct of collective bargaining where one side has all the information is conducive to a sound labor relations program.

In another interesting case the Council issued a decision which allowed one level of management to totally preempt a promotion plan from the bargaining table under the guise of uniformity. The Department of the Air Force issued a set of regulations covering promotions. The regulations were so inclusive as to preclude negotiation on promotions at a level lower than the Department level. When the union sought to negotiate on promotions, it was declared non-negotiable due to higher level regulations. The Department of the Air Force defended the regulations on the need for "uniformity." The Council merely accepted the self-serving statement of the Air Force and declared the proposals non-negotiable. The Council did not examine the actual need for uniformity or the actual impact of such a decision; the position of one management group was sustained by the second management group.<sup>8</sup>

A second inherent conflict of interest in the Executive Order system is the relationship of the Assistant Secretary of Labor for Labor-Management Relations and the Secretary of Labor. The Assistant Secretary of Labor is responsible for making the initial determinations in representation cases, unfair labor practice charges, grievability determinations, and standard of conduct determinations. The role of the Assistant Secretary is analogous to the first level judicial system with the Council serving as an appellate or review body. And since the Assistant Secretary has rendered decisions in 4385 cases since 1970, he has obviously played the principal role in the course of federal labor relations. Thus, we have the Assistant Secretary of Labor who is appointed by the Secretary of Labor who in turn sits on the Council. How can the Assistant Secretary perform his job in an independent manner if his superior sits on an appellate body who will be reviewing his actions? In addition, the same problem exists with the Assistant Secretary as exists with the members of the Council: he is a manager appointed to carry out the managerial policies of the President. He is not independent in any sense of the word.

For example, there exists a long standing policy enunciated by the Civil Service Commission that federal employee home addresses may not be released to individuals outside of the government. This policy is in direct conflict with the policy developed in the private sector that employee home addresses may be released to the union with exclusive recognition when it is necessary for the union to communicate with members of the bargaining unit in order to carry out its duty of representing the interests of the employees in the unit. The Supreme Court has stated:

"There can be no question of the general obligation of any employer to provide information that is needed by the bargaining representative for the proper performance of its duties. Similarly, the duty to bargain unquestionably extends

<sup>7</sup> *NLRB v. Whittin Machine Works*, 217 F. 2d 593; 35 LRRM 2215 (1954).

<sup>8</sup> *Sheppard Air Force Base*, No. 71A-60, Report No. 36 (1973); see also *Aberdeen Proving Ground*, No. 72A-37, Report No. 39 (1973).

beyond the period of contract negotiations and applied to labor management relations during the term of an agreement."<sup>9</sup>

Thus, the Court upheld the Board determination that the employer had committed an unfair labor practice by refusing to provide the information requested by the union. The Court found the refusal to be a violation of the employees' right to organize and bargain collectively.

We sought to incorporate this well accepted doctrine into the private sector by requesting a list of home addresses for the employees we represented in Florida.

The employees we represented are located in 19 posts of duty throughout the entire state of Florida. The unit consisted of approximately 900 employees only one half of whom were members. The agency denied our request, we filed an unfair labor practice charge, the CSC intervened seeking to sustain its long standing policy developed well before collective bargaining existed, a hearing was held and the Assistant Secretary dismissed the complaint. The decision was sustained by the FLRC. As may be expected, none of the deciding officials would even review the CSC policy to determine whether it should be changed in light of the new labor relations program.

Another example of the failure of the Assistant Secretary to deal with a long standing CSC policy occurred in the *Department of Defense, State of New Jersey*, case (A/SLMR No. 323 (1973)). The union sought evaluative material of employees other than the grievant in order to resolve a grievance. The Administrative Law Judge ordered the information produced. The Assistant Secretary reversed and passed the question directly to the Council.

The final example we wish to cite concerns the Assistant Secretary's interpretation of Section 10(3) of the Order. The Assistant Secretary first decided that an employee was entitled to his union representative at certain meetings with the employer.<sup>10</sup> The Assistant Secretary articulated no limitation on the right of the employee to have a union representative at meetings with an agency official. This decision spawned much criticism of the Assistant Secretary by the federal government management family. In the *Texas Air National Guard* case, A/SLMR No. 336 (1974), the Administrative Law Judge enforced *Fort Wainwright*. However, the Assistant Secretary on his own motion, in a burst of creative writing which provided no rationale, held that an employee is not entitled to a representative if the session may be termed as "counselling." This bit of phrasing can only be compared to the Department of Defense' justification for bombing in Vietnam as acts of "protective reaction." The issue in this case was the basic right of an employee to request and receive representation by his exclusive representative. The phrase "counselling session" has now been picked by other agencies as a device to always exclude union representatives from participation in meetings between employees and supervisory and management officials.<sup>11</sup> Federal government managers now have a satisfactory interpretation of Section 10(e).

The predisposition of the deciding officials and the resulting lack of credibility generate a real need for an independent group to administer the labor relations program in the federal sector.

B. THE SCOPE OF BARGAINING IN THE FEDERAL SECTOR IS EXTREMELY LIMITED AND MAY BE CORRECTED ONLY THROUGH LEGISLATION.

1. The language of the Executive Order as interpreted by the Council leaves few substantive areas for negotiation.

In typical fashion, the Executive Order first raises expectations by setting out very broad parameters for negotiations: "An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions . . ." However, what in one line is given is then taken away in the next line:

" . . . the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology

<sup>9</sup> *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 64 LRRM 2069 (1967); *Standard Oil Co. v. NLRB*, 69 LRRM 2014, 399 F. 2d 639 (1968); *Prudential Insurance Company v. NLRB*, 69 LRRM 1409, 412 F. 2d 77 (1969); *United Aircraft v. NLRB*, 75 LRRM 2692, 434 F. 2d 1198 (1970).

<sup>10</sup> *Fort Wainwright*, A/SLMR No. 278 (1973).

<sup>11</sup> The Assistant Secretary utilized the same reasoning in *Internal Revenue Service Philadelphia Service Center*, Case No. 22-4056 (CA).

of performing its work; or its internal security practices: This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change."

\* \* \* \* \*

"... Each agreement between an agency and a labor organization is subject to the following requirements—(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—

- (1) to direct employees of the agency;
- (2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;
- (3) to relieve employees from duties because of lack of work or for other legitimate reasons;
- (4) to maintain the efficiency of the Government operations entrusted to them;
- (5) to determine the methods means and personnel by which such operations are to be conducted; and
- (6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency;"

A fair reading of these restrictions prompts the reasonable man to ask what is left for the collective bargaining table? Are not all personnel policies actually "methods means and personnel by which such operations are to be conducted?" Do not all collective bargaining agreements delimit the unilateral control of the manager and thereby impinge on his ability to "direct employees of the agency?"

This language has been used by the Council to seriously restrict the scope of negotiations under the Order. For example, one of the most significant issues facing many federal employees at this time is the question of contracting out of jobs and work assignments. In the matter of *Tidewater Virginia Federal Employees Metal Trades Council*, FLRC No. 71A-56 (6/29/73), the Council upheld the agency's determination that the union's proposals concerning contracting out and job assignment were not negotiable.<sup>12</sup>

The unquestioned need for employees to negotiate about such issues was confirmed for private sector employees by the Supreme Court in the case of *Fiberboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 57 LRRM 2609 (1964). The Court held that subcontracting of bargaining unit work is a mandatory subject of bargaining. Factors such as valid economic considerations and the fact that the subcontract eliminates all the jobs in the unit may influence the decision making of the Company during negotiations; however, these considerations do not force the issue off the table. The Supreme Court recognized that problems of importance to individuals are not resolved by ignoring them or by issuing unilateral declarations.

Another example of avoiding one of the most basic issues touching each employee in a unit is the Council decision in the matter of *Plum Island Animal Disease Laboratory*, FLRC No. 71A-11 (7/9/71). The Council held that hours of work and changes in tours of duty were not negotiable. Work hours and especially changes in work hours are a traditional subject of negotiations in the private sector. In the case of *DiVincenti Bros.*, 156 NLRB No. 22, 61 LRRM 1004 (1965), the NLRB held that the employer had committed an unfair labor practice by effecting changes in the employees' hours of work without prior notice or discussion with the union. It is merely a matter of sound management to discuss changes of working hours with affected employees. However, the federal government managers resist even the common sense approach. And this is supported by the Council.

<sup>12</sup>The Council issued a similar decision in the matter of *Charleston Naval Shipyard*, FLRC No. 71A-56 (6/29/73).

In an attempt to minimize the restrictive language in the Order and the even more narrow decisions by the Council, Chairman Hampton cites a long list of subjects included in collective bargaining agreements. But it is not enough to merely cite a long list of items included in collective bargaining agreements to show that collective bargaining is taking place in the federal sector. What Chairman Hampton fails to cite or show is the substance of the provisions contained in the Agreements. The substance of the clauses is very limited and reflect in large part the personnel regulations in existence at the facility.

The scope of bargaining must be increased in order to allow employees to participate through a system of collective bargaining in the matters which are of vital concern to them.

*2. Collective bargaining in the form of "consultation" is no substitute for a system of collective bargaining.*

Chairman Hampton points with apparent pride to the "bilateral" system in the federal government which he states transcends the normal recognition unit: "For example, recent laws have established permanent vehicles for direct union involvement in white-collar and blue-collar pay setting. . . . This is not collective bargaining per se, but those involved in the process are aware it is a significant step forward in meaningful consultation . . . Other examples of union involvement are the Health Benefits and Life Insurance Committees." Let us examine the actual "bilateral" nature of these two examples.

The system of setting pay in the federal government provides that the Federal Employees Pay Council (FEPC) meets with the President's agents—Chairman of the Civil Service Commission and Director, Office of Management and Budget—in an attempt to determine and define comparability of wages between jobs in the federal government and jobs in the private sector. In addition, the FEPC meets with the President's agents in an attempt to define surveys conducted by the Bureau of Labor Statistics in an attempt to refine the material received from the survey into a comparability determination.

Chairman Robert E. Hampton described the "bilateral mechanism" for determining wages for classified Federal employees as a "close first cousin to collective bargaining." This is not the case. If it were, such bargaining would have been abandoned years ago as unfair to both parties.

Not once, since enactment of the 1970 law, have Federal employees received a full comparability adjustment. Their pay raises have either been delayed or significantly reduced. In 1971, the first year the Act became effective, the President, without awaiting the required reports of the Council, his Agent, or the Advisory Committee, submitted an "alternate plan" to Congress proposing a six-month delay in the 6.6 percent comparability adjustment scheduled for January 1, 1972. Such action would have decreased the effective annual take home pay of Federal employees by 3.3 percent.

Initially, Congress failed to overturn the "alternate plan." However, in adopting amendments to the Economic Stabilization Act later in 1971, Congress legislated a wage increase for Federal employees effective on the first of January, "that shall not be greater than the guidelines established for the wage and salary adjustments for the private sector. . . ." Under the regulations to the Economic Stabilization Act, which were effective at that time, private sector workers were permitted salary increments of as much as seven percent. But the President determined that Federal employees were only entitled to a 5.5 percent comparability adjustment which, thereby, deprived them of 1.1 percent of the pay raise they should have received.

In 1972, the President completely ignored the requirements of the Comparability Act and postponed the October 1, 1972, adjustment for three months without submitting an "alternate plan" to Congress. Even though Federal employees were expressly excluded from coverage of the Economic Stabilization Act by the Cost of Living Council, the President took the position that the Stabilization Act superceded the Comparability Act and necessitated the deferral without the submission of an "alternate plan." Congress was thus deprived of even the opportunity to overrule the President through the mechanism provided in the Comparability Act.

NTEU immediately challenged the President's delay of the comparability adjustment in an unprecedented lawsuit filed in the United States District Court for the District of Columbia. Even though we were ultimately successful in our lawsuit and all employees will receive over \$533 million dollars in back pay, filing lawsuits can hardly be construed as "bilateralism."



Again, in 1973 the President sought to defer the October 1 comparability adjustment. Unlike the year before, he did submit an "alternate plan" to Congress which was overruled by the Senate on September 28, 1973. Despite the Senate's action, however, Federal employees again received a smaller comparability adjustment than that to which they were clearly entitled. Through a statistical change in the method of determining comparability, the October 1, 1973, Federal pay raise was reduced from 5.47 percent to 4.77 percent.

For three years, I have served as a member of the Council, and, during this time, neither the Agent nor his representatives have made any effort whatsoever to establish a true "bilateral" relationship with the Council. The discussions between the Council and the Agent, rather than a "close first cousin to collective bargaining", more clearly resemble Greek theater, where the fatal flaws of the system foredoom the result to predictable failure.

The tedious scene, which takes place at the weekly meetings of the parties, finds the Pay Council's proposals for improving the pay-setting process for General Schedule employees generally being rejected out-of-hand by the President's Agent or his representative, or subject to inordinate delays. For example, the Bureau of Labor Statistics conducts an annual survey which is a comparison of salary rates paid the private sector with similar key jobs in the Federal sector. This job matching process goes to determine "comparability" of Federal with private sector salaries which is the goal of the Federal Pay Comparability Act of 1970. Almost four years ago, we first proposed to the President's Agent that the present Bureau of Labor Statistics annual survey be expanded to include bonuses as well as to include salaries paid by legal and accounting firms. Bonuses represent a significant amount of income for private sector workers and, despite the fact that the Federal government employs thousands of attorneys and accountants, the primary and highest-paying employers of such individuals in private industry have never been included in the survey.

Because the inclusion of bonuses and legal and accounting firms in the survey and in pay rate determination would increase the annual comparability adjustment, the Agent refused, for three years, to even initiate preliminary studies on these proposals. Only after a highly critical report on the present pay-setting system was issued by the General Accounting Office last spring did the Agent finally begin the initial studies necessary to expand the survey to include bonuses and legal and accounting firm salaries.

Even here, however, the Agent and his representatives have demonstrated a disingenuous approach. Though they, at long last, conceded the obvious, that bonuses are compensation and should be included as a factor in determining salary comparability, the President's Agent has insisted that the collection of the necessary bonus data from private industry be so restricted as to have a minimum impact on the Federal payline. Bonuses which are paid in the private sector will not be reflected in the pay rates for Federal employees and, consequently, Federal workers will not receive the full comparability adjustment to which they are entitled.

On at least two occasions this year, the President's Agent has refused to provide the Council with necessary data in his possession or even to discuss matters which could have a significant impact on the Federal paysetting process. Just within the past few weeks, the representatives of the Agent have denied the Council's request to participate in the development of studies now underway which could result in a recommendation that area and occupational wage systems be established for General Schedule employees.

Despite the fact that these studies could significantly alter the present mechanism for determining pay for Federal employees, and that they have been openly discussed in newspaper articles by Commission officials, including the Chairman, the Agent's representatives have determined that "they are not a proper matter for Council consideration."

In the past four years, the Council has advanced numerous other proposals for improving the pay-setting process and each of these have been given short shrift by the President's Agent. We have attempted, for example, to gain the Agent's acceptance of our proposals to change the present system of calculating the Federal payline so that it more accurately reflects private industry pay, and to provide for a cost-of-living addition to the annual comparability adjustment to compensate Federal employees for the six-month time lag between the collection of the pay data and the implementation of the comparability adjustment. These also met with a veto by the Agent.

In these times of unprecedented inflation, it is of vital importance that Federal employees receive a wage increase that reflects the rapid escalation in the

cost of living that has taken place in the past year and not be denied a full comparability pay raise simply because the data upon which the adjustment is based is six months old. With living costs increasing at a projected annual rate of 10-12 percent, the delay between the conclusion of the Bureau of Labor Statistics survey and the implementation of an adjustment, without a cost-of-living add on, could result in Federal employees being denied as much as 6 percent in their next pay raise.

Nevertheless, this proposal and many others have been arbitrarily rejected by the Agent; not because they are unfair or unreasonable, but simply because they would increase the amount of the October pay raise. Yet, when it comes to an issue that would have a depressing effect on Federal salaries, the Agent responds with amazing alacrity to implementation.

Last year, the Agent and his representatives insisted that a change be made in the "reference point" for comparing Federal and private sector salaries, which resulted in a nearly 1 percent decrease in the October 1973 comparability adjustment. We sought to convince him that any change in the "reference point" should not be made without a thorough study of the entire pay-setting system. We, therefore, proposed that the "reference point" adjustment be postponed for one year, pending a joint study of this issue as well as all proposals made by the Council, and upon completion, the joint recommendation detailing the necessary changes in the system be forwarded to the President for his consideration.

Our efforts, however, were to no avail. The change in the "reference point" was swiftly implemented and Federal employees were again shortchanged in last October's comparability adjustment. None of the Council's proposals, many of which would have offset the 1 percent reduction in the Federal pay raise, were adopted by the Agent. Nor has the Agent been willing to reopen discussions on the change in "reference point" during this year's meetings with the Council, despite our continued and well-founded criticism of this mechanism.

Interestingly enough, the Advisory Committee on Federal Pay, which is appointed by the President as a neutral body empowered to review the Agent's and the Pay Council's reports and make its own recommendations to the President prior to the comparability adjustment, found the Council's proposal much more palatable than did the Agent. In its report to the President, his Advisory Committee urged that the "change in the reference point as recommended by the Pay Agent be adopted, except that the transition period be deferred by one year" and "that the parties develop the facts relating to other items . . . and negotiate thereon, prior to the submission of the Pay Agent's report for Fiscal 1975, to determine the extent, if any, counter-balancing or additional adjustments are appropriate."

Neither the President, his Agents, nor their representatives—not one of them—has ever demonstrated any regard for the pay problems of Federal employees or the recommendations of their representatives on the Federal Employees Pay Council. To fully appreciate the widespread unilateralism in the present pay-setting system, one need only look at the structure of the law and the parties involved.

The President's chief budget and management officers serve as the Administration's representatives in discussions with the Council. Before they begin, the budget for the next fiscal year has already been determined as has the pay raise which is to be accorded the over 2 million Federal employees under the General Schedule and military pay systems. Because there is no requirement for "true negotiations" between the Agent and the Council, any recommendation by the Council which would increase the predetermined figure for the comparability adjustment has been automatically rejected by the Agent.

Once the discussions between the Council and the Agent draw to a close, the Agent then submits its recommendations for the October adjustment to the President, as does the Council and the Advisory Committee on Federal Pay. However, the President is not bound by the recommendations of either the Council or the Advisory Committee, and since it is his Agents which are not only charged with submitting pay recommendations under the Comparability Act but also with determining the Federal payroll in their capacities as Director of the Office of Management and Budget and Chairman of the Civil Service Commission, it comes as a surprise to no one as to which yearly report he has opted to implement.

The system is doomed from the beginning. The President controls, through his Agents, the recommendations which will be forwarded to him by the management representatives in the pay-setting process. He then is authorized, under

the law, to either adopt their recommendations and implement an October 1 comparability adjustment or, as he has chosen to do every year since the law was enacted, attempt to delay the pay raise. There is not evidence to indicate that a concern has ever been shown for maintaining a fair program in which the views of the Council and the Advisory Committee are accorded the same consideration as those of the Agent: the Administration's concerns seem limited to keeping any pay adjustment within the pre-ordained budget figure.

Much of what we have just said was recognized by the Advisory Committee on Federal Pay which stated in last year's report to the President concerning the implementation of the "dual payline" that:

"... borrowing from our experience in the private sector, it is a well established labor relations principle that when an industrial practice gets out of line it must be adjusted. If the decision is left only to the financial officer, he would eliminate the practice forthwith and effectuate immediate savings. However, the labor relations officer would recognize that an adjustment must be made on a gradual basis to make it more palatable to the work force and to assure continued good labor relations. The chief executive officer in industry must consider both the financial and labor relations factors and he generally opts for the gradual or transitional approach, recognizing the need for maintaining morale and continued productivity. From management's point of view, the savings once achieved continue for infinity.

"In this instance, the Pay Council resents the seeming budgetary emphasis without an opportunity to determine the possible counterbalancing effect of the other factors upon the downward impact of the change in the reference point. Delay would permit the necessary opportunity to develop the facts, negotiate as to their application, prepare employees for the change, and make such further upward or downward adjustments as may be appropriate.

"A long-range perspective calls for gradual achievement of the cost saving. Pressing for the short-range monetary advantage to cut costs unnecessarily risks the long-range stability of employee relations and may incur hidden and even greater costs."

Behind a facade of impartiality and "bilateralism" lies the cruel reality of naked power; the unilateral authority to implement a pre-determined comparability adjustment and to defer Federal pay raises. Under present law, the Federal Employees Pay Council does not have the right to negotiate with the President or the President's Agent and their representatives. It is basic to any fair conclusions between parties that there be something resembling equal power at the bargaining table. Under the Comparability Act, however, all of the power rests with the President and his Agent. There exists no "bargaining" and no "bilateralism".

The Health Benefits and Life Insurance Advisory Committee is also a charade. Andrew Rudduck, former director of this program for the federal government, testified for Congressman Waldie's Subcommittee on Retirement and Employee Benefits that the union members of this Committee were not even consulted, let alone participate in bargaining, concerning changes in benefits or projected rate increases in the various health benefits plans. This was at a time when one carrier, Blue Cross/Blue Shield was projecting a 60 million dollar loss; however as a result of increased premiums and decreased benefits to subscribers they obtained a 95 million dollar surplus. All of this was done with the approval of the CSC without even informing the Committee. This cannot even be classified as consultation and certainly not as bargaining.

The "bilateralism" set forth by Chairman Hampton is merely a mask to hide the reality of unilateral action taken after "listening" to various viewpoints. It is not and cannot be a substitute for actual participation.

*2. Certain Statutes must be changed so as to increase the scope of bargaining in the federal sector*

At present as Chairman Hampton pointed out it has been the practice of Congress to delegate to the Commission the implementation of all statutes concerning federal government personnel. For example, implementation of the classification system, decisions on Equal Employment Opportunity matters, decisions on adverse actions, implementation of the Fair Labor Standards Act, and virtually every other matter in Title 5 of the United States Code. These directives by Congress do in fact limit the scope of negotiation and can only be changed through legislation.

When these matters were delegated to the Commission, there existed no alternative; the Commission was the logical choice to implement the statutes.

However, that does not mean that this delegation to the Commission must remain with the Commission in perpetuity. Federal employees should have the opportunity to participate in the matters which affect them by negotiating the implementation of those statutes which affect them. The Civil Service Commission should go back to the role for which it was originally conceived: hiring personnel. Let employees negotiate the implementation of statutes with the individuals of the agency who are paid to manage that agency; not the Civil Service Commission. This can only be accomplished through legislation which would have the effect of allowing negotiation on the implementation of statutes enacted by Congress.

I believe it is now clear that the scope of negotiation in the federal sector is very limited both by the language of the Order itself and the statutes which delegate implementation authority to the Civil Service Commission. I believe it is also now clear that the "bilateralism" described by Chairman Hampton is a cruel hoax. All of this can be changed only through legislation.

C. LEGISLATION IS NEEDED TO REDRESS THE PREDOMINATE MANAGEMENT BIAS IN THE LABOR MANAGEMENT RELATIONS PROGRAM IN THE FEDERAL GOVERNMENT

Since Executive Order 11491 was drafted by managers to protect managers, it should not be surprising that the goal has been accomplished. Let us examine some of these clauses:

1. Section 3 allows an agency head "in his sole judgment" to determine that an employee, group of employees, or an entire job classification of employees shall be excluded from coverage of the Order in the interest of "national security". It does not take a vivid imagination to see the abuse inherent in this section.

2. Section 10 of the Order requires the conduct of an election under all circumstances. Thus, even though a union obtains signatures from 100% of the employees in the unit designating it as the exclusive representative, an election must be conducted. This Section has the effect of forcing the union to participate in an election under all circumstances even though the outcome cannot be in doubt. It has the effect of dissipating a union treasury in organizational activities rather than negotiating activity. And it is the latter which has the impact on the manager.

3. Section 11(c) of the Order prohibits the negotiation of an agency shop agreement. Thus, nonmembers are entitled to receive the same benefits as members; and further, the union is required to represent all nonmembers as though they were members. This clause encourages nonmembership in the union. It also has the effect of keeping union treasuries low and unions relatively weak.

4. Section 13 of the Order is the result of the changes implemented by Executive Order 11616, promulgated in 1971. This Section provides management with an opportunity to totally frustrate employees seeking to grieve a condition of employment under the collective bargaining agreement. If an agency does not feel that an issue is grievable it has the option of referring the question to another arm of management for determination. An employee is then compelled to go through a maze of procedures and hearings to then learn if his grievance is even grievable or arbitrable. This process can take many months. Obviously employees are discouraged in the filing of grievances when management has this vast arsenal of weapons at its disposal to destroy the attempt of an employee to "... participate in the formulation of personnel policies and practices."

5. Section 14 of the Order provides agencies with yet another opportunity to frustrate employees in their attempt to meaningfully participate in the personnel policies and practices which affect their working conditions. This Section allows an agency to totally frustrate and delay the negotiating process. A manager who is negotiating with a union can accede to union proposals with the full knowledge that the terms agreed at the table will later be rejected. In other words a manager can mindlessly or maliciously agree to a proposal, and the agency, "upon review", can throw out 10 months of negotiations. It is, at minimum, redundant that the agency action must be reviewed whereas the union negotiator is bound at the negotiating table. Obviously, true collective bargaining between equals does not take place when one party has the knowledge that he can agree to provisions at the bargaining table which he knows are improper. While the union is stuck with whatever provisions it can win, management knows that its concessions are not necessarily binding. Management thus gets two bites of the apple to every one of the union. This is hardly the bargaining between equals which exists in the private sector.

The delay caused by higher level review of contracts is intolerable. Chairman Hampton's own statement reveals that the review of contracts often takes as long or longer than their negotiations. Obviously, collective bargaining is frustrated when a contract is held up for months being reviewed by agency officials in Washington. It would seem that after 12 years that activities should be able to negotiate their own contracts without the help of big brother.

6. Section 19(d) of the Order provides that issues which can be raised under an appeals procedure may not be raised under the unfair labor practice section. This means that an employee who is fired for what he and/or his union believes are anti-union reasons is compelled to go to the Civil Service Commission for relief. The employee can not charge the agency with an unfair labor practice and have that charge processed under the normal procedures. The best chance for justice for an employee who has been removed for his union activities, would be for the case to go before an Administrative Law Judge who is trained in the intricacies of labor law. In contrast, the appeal route through the Civil Service Commission can hardly be considered as a review by anyone other than a management official. The regulations of the Assistant Secretary also give priority to allegations involving discrimination in regard to hiring and conditions of employment.<sup>14</sup> The Civil Service regulations provide no such priority and hearings are often not held for six to nine months, after the employee has been removed.

7. Section 20 of the Order was clearly designed to frustrate the collective bargaining process. This Section provides that during negotiations of contracts that employees on the union side of the table are authorized only 40 hours or half of the time spent at negotiations on administrative time. According to Mr. Hampton's own statement of May 21st, more than 2/3's of the negotiations take three to four months to finalize. Our own experience in negotiating bears witness to the fact that the time allowed by Section 20 results in a hardship for employees who sit on the union side of the bargaining table. We recently concluded 27 days of negotiations for a renewal of a contract with IRS District Offices. In negotiations with ATF it took 87 days to finalize the initial contract. Negotiations for the agreement covering the service center employees of IRS took 30 days.

It becomes painfully obvious to union members of a negotiating team that management has no pressure whatsoever to conclude the negotiations. It is readily apparent from the figures cited by Mr. Hampton and from our own experience that this Section has been concocted to place pressure on the union while relieving any pressure on management.

#### D. WITHOUT LEGISLATION THERE CAN EXIST NO JUDICIAL REVIEW OF AGENCY ACTION

At present the Federal Labor Relations Council is free to render decisions which are not subject to judicial review. The traditional tests of judicial review are not applicable; therefore, it does not matter that the decision is arbitrary, capricious, fails to be based upon substantial evidence, or is an erroneous conclusion of law. The decision of the Council stands.

The only way this can be corrected is through legislation. Federal employees should enjoy the same rights available to any other member of the population injured by a decision of a federal agency: the right of review in the courts.

#### E. IT IS NOT POSSIBLE FOR THE EXECUTIVE ORDER SYSTEM TO REFORM ITSELF

There are many reasons why the Executive Order system cannot reform itself. One very significant reason is that the Executive Branch does not have the authority to reform itself. The President may not establish an independent agency to make unfair labor practice determinations; the President cannot change Title 5 to remove the responsibility of the CSC to implement the personnel laws; and the President cannot create jurisdiction in the Courts to review agency actions. These matters may only be corrected with legislation.

However, even if the authority existed to change, it is unrealistic to expect meaningful change. First, the federal government in the form of the Civil Service Commission views itself as a good employer in that "it has no desire to deny to Federal employees the general level of rights and benefits which employees are able to secure through collective bargaining in the private sector." The CSC argues that it is willing to unilaterally incorporate the general level of benefits obtained through negotiations in the private sector; therefore, there is no need

<sup>14</sup> Section 203.5(e) of Title 29 C.F.R.

for employees to participate through unions in the collective bargaining process in the federal sector. Unilateral incorporation of benefits to employees suffers the faults of all paternalistic systems. They do for the child what the parent thinks is best. Not that this is necessarily bad, but it is not very satisfactory when the child is an adult with his own ideas of what is good for himself. Paternalism is no substitute for participation.

Second, it is unrealistic to believe that individuals with authority will voluntarily relinquish that authority. A simple example of that fact is the fanfare associated with the CSC program "to increase the scope of bargaining". The CSC announced that it was going through the Federal Personnel Manual on a page by page basis to increase the scope of bargaining by removing the mandatory nature of the language. After a year of study, the CSC came up with a list of proposals headed by the right to negotiate the charging of leave in less than quarter hour segments. We could not have expected more.

F. THE SUCCESS OF THE ORDER CANNOT BE MEASURED IN TERMS OF THE NUMBER OF EMPLOYEES IN UNITS OF EXCLUSIVE RECOGNITION

Chairman Hampton measures the success of the Executive Order program in terms of the success of unions in obtaining units of recognition: "Unions have reported gains in membership, in recognition earned, and in agreements reached. . . . As of November 1973, unions have bargaining rights for more than a million (56 percent) of the nearly 2 million non-postal employees." This measure of success is totally erroneous.

First, when measured against employers in the private sector of equal size, the 56% figure falls woefully short. For example, basic steel is 95% unionized, motor vehicles are 95% unionized, pulp and paper are 94% unionized, etc.

Second, the statistics are very misleading. While it is indeed true that federal employee unions have grown tremendously in size during the last 12 years, a true and undistorted look of the growth figures reveals that the majority of the growth took place in the 1960's and that in the past few years unions have been growing in smaller and smaller amounts and some have been fighting to retain their membership and number of employees in units of recognition. The reason for this fact of low to zero growth was stated by President Lincoln a hundred years ago. Lincoln is purported to have said to a caller at the White House that you may fool all the people some of the time; and you can even fool some of the people all of the time; but that you can't fool all the people all the time. Federal employees fortunately fall into the last category, you can't fool all of them all of the time.

Federal employees have come to learn that the game they are playing has been fixed. Any gambler can tell you that in a fixed game the sucker always wins a few of the little hands to keep him on the hook but in the end he winds up broke. Federal employees are in that kind of game. They get tossed a minor concession here and there but in actuality they are playing a losing hand. They can never have a real voice in the implementation of the personnel policies and practices which effect their conditions of employment under the present system. The game is fixed because all the marbles are in the hands of management. Management wrote the rules. Management interprets the rules. And management enforces the rules. All unions ever get to do is *comment* on the rules. If there is dissatisfaction with the way a rule is being interpreted by one arm of management, the unions can only appeal to the other arm of management for relief. And in this situation the left hand does know what the right hand is doing.

The proper criteria for measuring the success of the Executive Order system are contained in the Preamble which states that public interest requires progressive work practices to facilitate employee performance and efficiency. And further that efficient administration of the government is benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment.

These are of course Olympian scale goals and they require super human effort to obtain, but the system at this point has not even reached the foothills. As we have seen the past 12 years have not resulted in a system of labor relations where the principles set forth in the preamble have existed. There have not been modern and progressive work practices. And there has not been an opportunity for employees to really participate in the formulation of personnel policies and practices affecting their condition of employment.

These goals may be achieved only through legislation.

IV. THE LEGISLATION NEEDED TO ESTABLISH A LABOR-MANAGEMENT RELATIONS PROGRAM IN THE FEDERAL SECTOR IS CONTAINED IN H.R. 9784

Chairman Hampton has summarily dismissed the concept of legislation for federal employees: "In general, we found these bills in conflict with the public interest and with the unique characteristics of Federal employment. We believe that they are unsound and would be disruptive to an existing, orderly labor-management relationship." We have already shown that the federal government is not unique as an employer, that the words "orderly labor-management relationship" are euphemistic for paternalism; and we will show that H.R. 9784 is legislation which is in the public interest.

The concept of meaningful collective bargaining is not new to this country. It is recognized as a method to achieve industrial peace. This fact was recognized as early as 1902 by the Industrial Commission:

"The chief advantage which comes from the practice of periodically determining the conditions of labor by collective bargaining directly between employers and employees is that thereby each side obtains a better understanding of the actual state of the industry, of the conditions which confront the other side, and the motives which influence it. Most strikes and lockouts would not occur if each party understood exactly the position of the other."<sup>14</sup>

It is recognized as a means for achieving industrial democracy. Employees are able through their union to participate in the matters which affect their job lives. And it is recognized as a needed substitute for individual bargaining. Fairness between employee and employer in salary, hours, and terms and conditions of employment is ensured where employees are entitled to take collective rather than individual action. H.R. 9784 is conceived with these goals in mind.

A. H.R. 9784 PROVIDES FOR A CENTRAL BODY TO ADMINISTER THE LABOR-RELATIONS PROGRAM

H.R. 9784 provides for the creation of a Federal Employees Labor Relations Board. The Board is to consist of five members appointed by the President with the consent of the Senate. The Board is vested with the responsibility of "preventing" any person from engaging in conduct in violation of this Act." In addition, the Act creates the position of General Counsel whose responsibility it shall be to investigate and prosecute violations of the Act. H.R. 10700 provides for a three member Federal Labor Relations Authority. The authority and responsibility of the Authority is the same as the Board. However, the Authority does not provide for the creation of a General Counsel position.

Chairman Hampton expressed a great deal of concern over the creation of "powerful centralized bodies." He goes on to state that "These central bodies would be virtually independent and would supplant the key existing third-party agencies authorized under the Executive Order program. . . . Careful consideration needs to be given to the range of authority for policy setting by a centralized body. For example, should such a body, without accountability, have power to commit elected officials to the major, unappropriated expenditure of funds, or to matters affecting the mission of agencies?"

Our answer is yes to all of the above questions. We have already shown that the "key third-party agencies" in the federal government are merely vehicles for perpetuating the power and authority of federal managers. It is not surprising that Chairman Hampton would refer to these individuals as "Key;" they are responsible for maintaining the policy of the federal managers in the context of Executive Order 11491.

Contrary to Chairman Hampton's statement, such an authority would have more "accountability" than the present Federal Labor Relations Council. Under either H.R. 9784 or H.R. 10700, either party could appeal a decision to the Courts. There exists no accountability under the present system.

It is also clear that when Congress declares a policy and provides an administrative procedure for challenging the failure to follow that policy, it cannot properly be stated that the administrative decision maker should not be allowed to redress an injured party. Chairman Hampton implies that the central authority should not be allowed to order back pay to employees who are injured by an agency action. There can be no central authority without the power to impose remedies. We do not believe that when Congress sets out policy to the Executive Branch of government and a federal manager fails to follow that policy, that it is vesting too much authority in a central body to review that action and order an appropriate remedy.

B. H.R. 9784 PROVIDES FOR BARGAINING ON ALL MATTERS CONCERNING WORKING CONDITIONS AND ENVIRONMENT, PAY PRACTICES, FRINGE BENEFITS, WORK HOURS, AND SCHEDULES, OVERTIME, WORK PROCEDURES, AUTOMATION, SAFETY, TRANSFERS, JOB CLASSIFICATIONS, DETAILS, PROMOTION PROCEDURES, SENIORITY, ASSIGNMENTS AND REASSIGNMENTS, REDUCTION IN FORCE, JOB SECURITY, CONTRACTING OUT, USE OF MILITARY PERSONNEL, DISCIPLINARY ACTIONS AND APPEALS, TRAINING, METHODS OF ADJUSTING GRIEVANCES, GRANTING LEAVE, UNION SECURITY, AND TRAVEL AND PER DIEM

As set forth above, H.R. 9784 provides for negotiation on all matters of concern to employees. The negotiations must take place at the level where recognition is granted. In contrast, H.R. 10700 seriously limits the scope of bargaining by maintaining with one exception, the management rights clause contained in the Order.

The sole exception concerns the issuance of changes in personnel policies by agencies other than the Defense Department. An elaborate procedure is set forth for discussing these changes: if the agency head issues the change, negotiation takes place and if the policy issuance is from the CSC or covers more than one agency, it is referred to the Federal Labor Relations Board composed of five representatives from the unions, five representatives from management and a Chairman appointed by the Chairman of the Civil Service Commission. This Board would then meet to determine the efficacy of the management proposal for change.

H.R. 10700 fails to deal with the two important questions under the present system. First, the expansive management right clause carves out many matters of importance to the working life of a federal employee. The continuation of such a clause merely increases the frustration over the inability to participate in the matters which affect him.

Second, the elaborate procedure for considering changes in personnel policies falls far short of employee participation in matters which affect them. Employees band together in collective action and appoint specific individuals to represent their interests. Under the procedure outlined in H.R. 10700, those individuals may or may not represent them on the Board. And even if on the Board, their vote may be overruled by management of other unions. The procedure is totally unfair and undemocratic. Elected representatives should be allowed to perform their functions of representing the interests of their constituents.

1. *The scope of bargaining mandated in H.R. 9784 should not be restricted because of the number of exclusive units of recognition in the federal government.*

Chairman Hampton in his testimony raised the serious question of how could the Congress of the United States turn over authority for economic benefits, classification, and other conditions of employment to 3400 bargaining units without controls on appropriations, oversight responsibilities and without a way of explaining to constituents why they are treated differently from employees performing identical functions. Mr. Hampton has characterized the problem of different units bargaining on issues of pay and benefits as an ominous threat to the public and to the power of Congress. However, a close examination of the issue reveals that Mr. Hampton's problem is like the tin man in the Wizard of Oz, it has no substance or heart.

The federal government itself seems able to conduct negotiations on pay and other matters with the employees of the Tennessee Valley Authority where 23 separate units exist. While it is true that TVA conducts negotiations at the present time on three contracts with councils of the recognized unions, the councils are not mandated by statute or regulations: TVA has two contracts to cover its construction workers and another contract for white collar employees. The salary and benefits are negotiated upon a study made of the prevailing rates paid by employers in the area.

The various states also conduct full negotiations in less than statewide units. A number of states use the language of the private sector—"community of interest"—to define units. Montana and South Dakota allow the employee organization total control over the definition of the unit. The states are divided as to whether extent of organization is a factor in unit determination. The Minnesota statute provides that the Board "shall place particular emphasis upon the history and extent of organization," while Vermont provides that it shall not be controlling. New York and New York City require that the agency consider the impact of unit determination on the public interest, while the Los Angeles Municipal Code and Minnesota require consideration of existing personnel classification systems. In Hawaii and in the Wisconsin State Employees Statute,



the bargaining units are statutory. The Wisconsin Employee Relations Board has the authority to determine in a limited fashion the size of the unit for municipal employees. The city of Milwaukee has many bargaining units ranging in size from 2800 employees in the Department of Public Works to 4 employees in the Election Commission. The City of Cincinnati has multiple bargaining units which utilize the coalition system of bargaining as discussed in regard to the TVA. Michigan, a state with a very sophisticated labor relations program, covering public employees, presently has 3500 collective bargaining contracts in 1400 units of government. In other words, states have followed a varied path in determining units; however, no state or municipal government has collapsed, because of the existence of many units. And states have not resisted legislation, because of the existence of many units.

It is now truly ironic that Chairman Hampton, the man who had the most to do with the number and size of the units of recognition in the federal government, would seek to buttress his case against legislation on the size of the units in the government.

It was the Civil Service Commission who had the primary responsibility for drafting and implementing Executive Order 10988. The Civil Service Commission issued a directive discouraging agencies from recognizing large units of recognition. The CSC wanted to keep the units small.

In retrospect, the Study Committee Report which formed the basis for Executive Order 11491, recommended the abolishment of the policy against small units, added the words "efficiency of agency operations" and "effective dealings" as two new criteria to the traditional "community of interest" definition of appropriate unit, and recommended that the Council institute a study to further examine and make recommendations on the size of units in the federal government. Clearly, the Study Committee recognized the need to increase the size of units by adding the new criteria and recommending to the Council further study of the issue. However, the record of the Council has been abysmal.

First, the Council has never publicly issued a study or given guidance, which would have the effect of increasing unit size. Second, when the Council was presented with an opportunity to consolidate 54 separately recognized bargaining units into one unit by means of a unit clarification request, the Council dismissed the petition.

In August 1970, we filed three unit clarification petitions with the Department of Labor seeking to combine 69 separately recognized units into three large units. These petitions were summarily dismissed by the Regional Administrator and his decision was ratified by the Assistant Secretary and the Council. The Regional Administrator conceded in his decision, that the proposed units would result in a more effective relationship between the parties as required by the Order. Interestingly enough, the employer supported our petitions and joined in the request to the Assistant Secretary to reverse the decision. Here then was a perfect example of an agency and union seeking to establish the optimum unit for collective bargaining, yet, they were frustrated by the Assistant Secretary.

Besides the rationale basis, there existed ample precedent for a different decision. The Board in the matter of *PPG Industries*, 130 NLRB No. 58, 73 LRRM 10001 (1969), held that petitions seeking the clarification of several units into one individual unit would not be automatically rejected as raising a question of representation as did the Assistant Secretary. In the private sector, it is a long standing principle that petitions for clarification are granted when the employees sought to be clarified have grown together from separate parts into a single entity. It is Board policy to grant clarification requests when the parties so desire. Thus, we were faced with a situation where we were attempting to improve labor relations for all parties concerned, based upon principles established by the NLRB in the private sector, logic, and good sense; however, the Assistant Secretary denied and frustrated these attempts. The Council sustained the decision of the Assistant Secretary.

The Assistant Secretary also failed in a second approach to unit consolidation. In the infamous case of *Veterans Administration*, A./SLRM 240 (1/15/73), a petition was filed in July 1971 by the Council of AFGE Veterans Administration locals for a unit encompassing all of the agency's employees. The Assistant Secretary, in a totally unprecedented decision, provided for a two stage hearing, which would first involve a consideration of the petitioners showing of interest and then a consideration of the appropriateness of the unit. The Assistant Secretary, after eight months, ruled that the petitioners showing of interest was insufficient, on the grounds that a petitioning union cannot utilize, in its showing of interest for a broad unit, employees presently covered by contracts, even

though they were AFGE contracts. The Assistant Secretary held that Agreement bars may not be waived unilaterally and that he will not examine units with contracts to see if changed circumstances exist sufficiently to require a changed unit. This decision, in effect, was the deathblow to any hopes that a union would have of filing a petition for nationwide exclusive recognition when it holds recognitions for smaller units within the agency. Since in an agency of any size, it would be almost impossible for all contracts to expire at the same time. The merits of the case, whether the proposed unit met the criteria of the Order, was never heard by the Assistant Secretary. The only nationwide units which exist in the federal sector are those units which were organized at one time in very small agencies. The decision of the Assistant Secretary has been on appeal to the FLRC since February of 1973, and the Council has still not rendered a decision.

Thus, it has been the desire of the unions to combine small units into larger units. And it is the very federal management which now complains about the proliferation of units, who refused to consider and resolve the matter. Therefore, this problem of "too many units" is obviously a red herring. The problem of multiplicity of units is a problem created and fostered by management in an attempt to avoid dealing with large nationwide units of recognition. It cannot now be used to thwart legislation.

H.R. 9784 defines the appropriate unit in the same terms as does the present Executive Order: community of interest, effectiveness of dealings, and efficiency of operations. This type of definition strikes a reasonable balance between units which are so large that individuals cannot participate, and units which are so small that they are impossible to administer. This definition recognizes that like situated employees will better understand their own problems and press their unique needs, and it also recognizes the instinct of exclusiveness which causes employees to want to form their own organization rather than become a part of a larger organization in which they may feel themselves strangers. In addition, if the definition were properly administered, it could lead to the reformation of old units through consolidation, and encourage multi-unit bargaining as seen in TVA.

Even if all of this is done; however, there will remain the situation of employees in the federal government who are performing essentially the same work receiving different pay and performing under different working conditions. Chairman Hampton has characterized such a situation as a disaster. We do not believe it so. The essence of collective bargaining is participation; and if employees in one unit choose to negotiate working conditions and pay which are different from another group of employees, they should be allowed to do so. For example, employees in Del City, Oklahoma may be satisfied with lower salary and a higher employer contribution to a pension plan; whereas, employees in New York City may desire a higher salary and lower employer contribution to a pension plan. Employees who drive their own vehicles a great deal may want a higher mileage reimbursement and lower salary than employees who work strictly in an office. The examples are endless. Such a system recognizes diversity and that uniformity is not Valhalla.

Such a system also recognizes that the validly elected representatives of the employees have the duty and responsibility to negotiate on behalf of those they represent. H.R. 10700 ignores this duty and responsibility by allowing non-elected representatives to dictate their terms and conditions of employment. It fosters uniformity over diversity and allows federal "managers" the excuse of "higher level regulations." Diversity forces managers to manage. In the private sector and in every state which has legislation, the obligation to bargain is coextensive with the unit of recognition. It is time for the federal government to cease its defecation of a centralized personnel system, and recognize that rather than help managers and employees, the system has served to stifle innovation, imagination, and management responsibilities.

2. *The scope of bargaining mandated in H.R. 9784 is not a relinquishment of Congressional authority or responsibility.*

H.R. 9784 defines collective bargaining *inter alia* as the obligation to meet at reasonable times and confer in good faith in light of the budget making process. "Collective bargaining" also includes "the obligation of the agency to submit such agreement to the appropriate governmental body for action" if legislative action is necessary to implement an agreement reached.

Thus, H.R. 9784 envisions a collective bargaining process which includes legislative oversight primarily through approving or disapproving agency budget

requests which may be based upon collective bargaining agreements. This is a larger Congressional role than exists under the present system.

H.R. 9784 is not unlike the New York system. Each agreement must contain the following statement:

"It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefore, shall not become effective until the appropriate legislative body has given approval.

Wisconsin takes a slightly different approach. The Wisconsin Revised Employment Relations Act vests the executive with bargaining authority. Where the executive and the union reach agreement, it is a tentative agreement which must be approved by the legislature. The tentative agreement is submitted to a joint legislative committee after the hearing, which is composed of the speaker of the Assembly, president pro tem of the Senate, majority and minority leaders and joint co-chairmen of the Committee of Finance. This committee then holds public hearings and acts to approve or disapprove the agreement. Once the committee approves the bill, implementing legislation is introduced into each house of the state legislature. If the committee does not approve it, it then goes back to the parties for further negotiation.

The New York and Wisconsin systems have worked and there is no reason why the same system cannot work in the federal government.

3. *The inclusion of a management rights clause is a debilitating burden to parties that are interested in resolving problems facing managers and employees.*

The inclusion of a management rights clause as proposed—H.R. 10700 discourages the resolution of problems and encourages reliance by managers on "my statutory management rights." The definition of "inherent managerial policy" or "conditions of employment" are usually arrived at only after litigation. State courts and/or public employee relations boards are forced to develop case law to accommodate the statutes, the parties and the realities. Ambiguous provisions actually deter effective bargaining. The process is time-consuming, expensive, irritating, and, in the long run, damaging to the public. Traditional collective bargaining does not hold these built-in detriments. Experience has shown that public employers are encouraged to test the parameters of statutory language by refusing to bargain on borderline issues. Indeed, it is an easy step, too often taken, for an employer to claim that anything done by the agency bears on the "mission of the agency" or was done to "maintain the efficiency of the service."

Bargaining is a therapeutic process. Not everything in bargaining is black and white, nor an absolute right or wrong, but it is an ongoing process in which an employer and employees reach agreement and solve problems. Problem solving is severely inhibited when one party can refuse to discuss or attempt to resolve a wide range of problems.

There is experience in the private sector, which warrants the conclusion that the place for a management rights clause is in the collective bargaining agreement; not the statute. Subjects which in 1935 were not considered problems are now common at bargaining tables. Our world is much too complex and fast moving to limit the subject of bargaining by statute. As Justice Harlan wisely stated in *NLRB v. Wooster, Division of Borg Warner*, 356 U.S. 342, 358 (1957):

"the bargaining process should be left fluid, free from intervention . . . leading to premature crystallization of labor agreements into any one pattern of contract provisions so that these agreements can be adapted through collective bargaining to the changing needs of our society and to the changing concepts of the responsibilities of labor and management."

Who is to know better what the changing concepts and needs are for a particular agency than the people who understand how that agency works?

It is interesting that in April 1972, Robert Hampton spoke at the Conference of Directors of Personnel, at the Federal Executive Institute in Charlottesville, Virginia, and seemed to adopt a flexible approach:

"the objective of the Scope of Bargaining project is to remove barriers . . . to negotiations, not to determine what is negotiable or come up with a longer list of negotiable items. Instead, the project is designed to (1) pin-point (Civil Service Commission) policies and regulations that might be undesirably restrictive and (2) suggest how they might be changed to broaden or remove uncertainty about the scope of bargaining in the Federal service."

This is exactly the point we are making. We are trying to remove uncertainty. We are trying to open up the process to remove the barriers. However, Chairman Hampton seems to have now changed his approach.

There have been a number of States which have moved forward his area.<sup>15</sup> However, the most relevant experience is that seen in the Postal Reorganization Act. Section 1011(e) of Title 39 of the United States Code provides a listing of management rights but provides that these rights are subject to alteration through collective bargaining. Quite rightly, Congress concluded that collective bargaining rather than "management rights" is the appropriate method for ensuring problem solving.

4. *H.R. 9784 would supersede all existing regulations while leaving all statutes in effect without change.*

The issue of the superseding of laws presently existing in Title 5 is of paramount interest to all parties concerned. The Postal Reorganization Act provides a good example of how this issue has been confronted in regard to collective bargaining for public employees.

The Act contains protective provisions for the continuance of compensation and benefits and other terms and conditions of employment in effect prior to the effective date of the law. Section 1005(f) provides that compensation, benefits and terms and conditions of employment will continue to apply unless changed through collective bargaining with the proviso that no variation, addition, or substitution with respect to fringe benefits can be made except by collective bargaining and further any variation, addition, or substitution with respect to fringe benefits must result in a program of fringe benefits which is not less favorable on the whole than the fringe benefits in effect on the effective date of the law. Thus, existing compensation, benefits and conditions of employment constituted the floor from which collective bargaining was to begin.

Among the benefits which were to be continued but which were subject to variation through the collective bargaining process were unemployment compensation under Subchapter I, of Chapter 85, of Title 5 U.S.C., and life insurance and health insurance benefits under Chapter 87 and 89 of Title 5. The Act continues sick and annual leave although they are subject to collective bargaining which does not result in benefits less favorable to employees.

The Act also continues the provisions of Subchapter I, of Chapter 81, of Title 5, relating to compensation for work injuries.

In addition to the foregoing, postal employees continue to be covered by the Civil Service Retirement System provided for in Chapter 83, Title 5, U.S.C.

Thus, the question of supercedure was handled in the Postal Act by retaining some statutes in total, such as the Civil Service retirement system and compensation for work injuries, but other statutes were established as the base upon which negotiations would be held.

As noted previously, 33 states have laws providing for collective bargaining for public employees. The question of supercedure of laws has been handled in various ways. In Hawaii, the law excludes from negotiations matters concerning classification and reclassification, retirement benefits and salary ranges. However, the wage to be paid within each range and the length of service for incremental and longevity steps is negotiable.

Other matters, such as the principle of equal pay for equal work or merit principles can be negotiated upon as long as they are not inconsistent with certain sections of the Hawaii code of laws.

The Michigan Public Employment Relations Act provides that the employer is to bargain in respect to wages, hours, and other terms and conditions of employment regardless of pre-existing laws or regulations.

The Wisconsin State statute deals with the vexatious problems of preexisting regulations by stating that all civil service and other applicable statutes concerning wages, hours and conditions of employment shall apply to employees not included in certified bargaining units. Thus, the law specifically provides for supercedure of civil service laws when an employer and exclusive representative are negotiating.

What we have in the federal sector under the Executive Order system and would have under H.R. 10700 is language which prohibits the negotiation between the parties on any matter covered by a higher level regulation. What we see

<sup>15</sup> Hawaii Rev. stat. Section 89-1 to -20 (Supp. 1971); Conn. Gen. Stat. Ann. Section 7-467 to -477 (1972).

is regulations issued by the Civil Service Commission implementing a statute; the Department issuing regulations implementing the CSC regulations; the Agency issuing regulations implementing the Department implementation; the Region within the Agency implementing the Agency implementation; etc. Nothing is left for negotiation at the recognition level. The manager is able to escape negotiations on the statement that "I really would like to negotiate with you on that matter; however, the higher level regulations prohibit me from doing it."

This is not problem solving; this is not management by decision making; this is management by excuse. Removal of the inhibiting regulation would increase the efficiency of government.

NTEU believes that the Postal Reorganization Act and particularly the Wisconsin Statute provide a clear example of how the issue of supersedure should be handled. We also would adopt the provision in the Postal Act retaining the laws providing for Veterans preference in regard to hiring. These procedures have worked for the Postal Service and they can work for all other federal employees.

C. I.L.R. 9784 PROTECTS EMPLOYEES IN THEIR RIGHT TO JOIN OR NOT JOIN UNIONS BUT DOES PROVIDE THAT THOSE WHO REFUSE TO JOIN MUST PAY TO THE UNION WHICH HOLDS EXCLUSIVE RECOGNITION AN AMOUNT EQUAL TO A MEMBER'S DUES

The protection of employees to join or not join a union coupled with the requirement that those who elect not to join must pay a fee equal to the amount of members' dues is called an agency shop. The uniform payment of dues or their equivalent becomes a valid condition of employment. The agency shop is a well-accepted doctrine in the private sector. In addition, the negotiation of agency shop clauses is specifically permitted by law in at least seven states.<sup>16</sup> In contrast to these statutory provisions which permit the parties to voluntarily agree upon an agency shop clause, the Hawaii public sector law requires an employer, wholly independent of negotiations, to deduct from the pay of all employees in the appropriate unit service fees and remit same to the exclusive representative. Similarly, the Minnesota statute provides that "the employer upon notification by the exclusive representative. . . shall be obligated to check off from non-members "a fair share fee for the services rendered by the exclusive representative." Massachusetts has analogous statutory provisions applicable to the City of Boston and Suffolk County. Thus, we see that the agency shop is not a grand experiment; it is a viable doctrine which is working in the states.

An agency shop arrangement is in fact in the public interest. Collective bargaining assumes that unions are free to act, and have the wherewithal to act, with a full measure of responsibility. A union must have the security and policy making stability that flow from the fact that policy and strategy decisions affecting all employees in the bargaining unit have been sanctioned by a union membership that is coextensive with the bargaining unit. And it must have the financial stability that flows from the fact that the costs entailed in exercising its responsibilities as the bargaining representative for all employees in the bargaining unit are being shared by all employees in that unit.

The opponents to the concept an agency shop marshal arguments in opposition. Let us examine them.

1. "Allowing an agency shop constitutes discrimination by the employer and has the effect of encouraging union membership." The Michigan Public Employment Relations Commission considered this argument in the *Oakland County Sheriffs Department*<sup>17</sup> case. The Board distinguished between membership and payment of fees and recognized the agency shop for what it is: a method to insure stability in the labor relations program and not a method to encourage membership:

"A requirement that employees pay their share of the cost of negotiating and administering a collective bargaining agreement neither discourages nor encourages membership in the labor organization selected by a majority of employees in the bargaining unit to represent them. It is not discriminatory, as

<sup>16</sup> Alas. Stat. ch. 40, Section 23.40.110(b)(2) (Supp. 1972); Michigan, Mich. Comp. Laws Ann. Section 423.210(1)(c), as amended by Act 25, L. 1973; Montana, Mont. Rev. Codes Ann. ch. 441, Section 5(1)(c), L. 1973, GERR Ref. File 51:3512; Oregon, Ore. Laws ch. 536, Section 4(1)(c), L. 1973, GERR Ref. File 51:4612; Rhode Island, R.I. Gen. Laws Ann. tit. 26, ch. 11, Section 24-11-2 (1972); Vermont, Vt. Stat. Ann. tit. 21, Section 1726(8) (Supp. 1973); and Wisconsin (municipal employees), Wis. Stat. Ann. Section 111.70(h) (Supp. 1972).

<sup>17</sup> 227 GERR F-1 (January 15, 1968).

the requirement that each employee pay his pro rate share of the cost applies alike to all employees in the bargaining unit, whether they are, or are not, members of the union."<sup>18</sup>

It is clear that an agency shop standing alone does not encourage membership and since the requirement is uniformly applied it does not constitute discrimination.

2. Another argument used is that "an agency shop violates merit principles." Governor Knowles in vetoing a Wisconsin State Act containing an agency shop clause in 1965 stated:

"... a requirement that public employees involuntarily contribute to unions: 'detracts from the merit procedure and places an additional impediment on obtaining and retaining qualified employees.'"<sup>19</sup>

This same theme—the notion that union security clauses are inconsistent with the merit system, which is a basic characteristic of public employment—is at the heart of most of the early court and state attorney general opinions which ruled (usually in the absence of any state legislation authorizing collective bargaining for public employees) that union security clauses were invalid.

Thus, for example, in *Petrucci v. Hogan*, 27 N.Y.S. 2d 718 (1941), a New York Court, in issuing an injunction against picketing by the Transport Workers Union for union security, said:

"Obviously appointments and promotions in the civil service must be determined upon merit and fitness. The right to appointment depends upon merit and fitness, not upon membership in a labor organization . . ."

Chairman Hampton echoed this theme in this testimony when he contended that the provision in H.R. 9784 providing for agency shop would violate the merit principles which are the cornerstone of Civil Service Commission policy. As a labor organization involved in representing thousands of employees throughout the nation we can only say that from our vast experience that the cornerstone is crumbling in the real world of employee relations merit is not always the yardstick used to measure an individual for a job.

Our experience reveals that frequently an agency is able to manipulate the Civil Service registers in order to select a predetermined individual. An agency does this by submitting to the CSC a selective certification request which is specifically tailored to fit the background and qualifications of the individual they desire. If Civil Service then submits to the agency a register containing more names than the individual desired, and if the individual is not among the top three on the list, the agency can massage the list in order to eliminate enough people to bring their man up to the top three. Once the desired individual becomes one of the top three people on the list, the agency is free to select him without worrying about any sort of challenge from CSC on their post audit of the register. If the individual is being considered for a high level job, in the GS-12 and up category, a high official in the agency will contact the Commission in order to insure special consideration in the development of the register. The higher the agency official the more special the attention given. Of course a veteran or disabled veteran who happens to fit the qualifications would go to the head of the register and have to be picked if a selection was made, but the agency could avoid this by sending the whole register back and not filling the job until a later date.

The second prong of the merit principle is the concept of "promotion based on merit." However, the CSC itself knows that promotions are not necessarily based on merit. The procedures are sufficiently flexible that in stating initial qualification, talking to the ranking panel, and influencing the selecting official the pre-selected individual is chosen. There exists little "merit" in the federal sector.

However, even if the merit principle were viable, it does not conflict with the concept of an agency shop. There are several state court decisions on the sub-

<sup>18</sup> *Id.*, at F-14.

<sup>19</sup> GERR. No. 122, B04 (January 10, 1966). While the bill in question was pending before the Wisconsin legislature, an opinion issued by the Wisconsin Attorney General sustained the constitutionality and legality of the proposal. The opinion stated, in part:

"If the question were to be decided solely on the concept that government employment is a privilege rather than the 'right to earn a livelihood by following the ordinary occupations of life' (11 Am. Jur. 1147), which is protected by the constitution, public employees would have no greater basis for challenging a governmental authorization of a union shop than the railroad employees involved in *Ry. Employees Dept. v. Hanson*, *supra* . . . the validity of the proposed requirement would be supported by the above cited decisions of the United States Supreme Court and by the decisions of the Wisconsin Supreme Court upholding the validity of a requirement for membership in the state bar associations as a condition of engaging in the practice of law . . ." GERR No. 100, D-12-13. (August 9, 1965).

ject. In 1968, in *Tremblay v. Berlin Police Union*,<sup>20</sup> the New Hampshire Supreme Court had before it a declaratory judgment action testing the validity of certain provisions in a collective bargaining agreement covering police department employees. The New Hampshire statute authorizing public employee bargaining is silent on the issue of union security. The agreement in question contained a Taft-Hartley type union shop clause. No employee could be discharged for non-membership except for failure to meet his financial obligation to the union. The Court ruled that the clause was valid as a reasonable concomitant of collective bargaining for employees which the state had declared to be proper public policy.

The concept of merit inhibiting an agency shop clause was more directly considered by the third Michigan Circuit Court—in *Smigel v. Southgate Community School District*<sup>21</sup>—where the Court likewise sustained the validity of an agency shop covering a bargaining unit of teachers. In its decision the Court observed that the agency shop "... has been a bargainable issue in the collective bargaining process for many years and has received recognition as having a stabilizing influence upon employer-employee relations." "Such provision," said the Court, "... serves the purpose of allocating indiscriminately the cost of representation for collective bargaining among all those participating in the benefits received. Such a provision eliminates the 'free riders'." And as to the contention that the agency shop agreement conflicts with the Teachers Tenure Act the Court said: "Such a contention presupposes a contradiction in the terms of purposes of P.E.R.A. and the Teachers Tenure Act . . . The latter promotes good order and welfare of the state and school system by preventing removal of capable and experienced teachers at personal whims of changing office holders . . . The purpose of P.E.R.A., under which agency shop provisions may be negotiated is to benefit employees with a sound, secure, unified approach to employee representation. Thus we see a common unified goal precluding an interpretation of the tenure act urging a conflict with P.E.R.A."<sup>22</sup>

If we really examine the concept of "merit", it is actually nothing more than a basic personnel policy which allegedly substitutes a different test for employment, advancement and discharge than political patronage. "Merit" is merely a condition of employment similar to several hundred other conditions of employment facing a federal employee. For example Internal Revenue employees are required to be familiar with a vast array of rules concerning their personal and official activities. Violation of these rules, written in the vaguest possible language, can result in disciplinary action against the employee. Two of these rules are:

"(2) No employee shall participate in any transaction concerning the purchase or sale of corporate stocks or bonds or of commodities for speculation purposes as distinguished from the bona fide investment purposes." Section 222.4.

\* \* \* \* \*

"Employees must be courteous, businesslike, diplomatic and tactful. They must not only perform their duties in a wholly impartial manner, but avoid any appearance of acting otherwise. They must be groomed in a manner fitting to the surroundings into which their assignments take them. Any lack of these qualities may be basis for disciplinary or other corrective actions." Section 228.2.

No one argues that "the merit principle" is violated if a Federal employee is not promoted or is discharged if he fails to pay lawful debts; no one argues that "the merit principle" is violated if a confessed thief is not hired; and no one argues that "the merit principle" is violated if under present law a Federal employee strikes. In each case a policy determination has been made, and the merit system is totally irrelevant. Similarly, a policy decision that payment of fees to a union constitutes a lawful condition of employment, and the failure to pay constitutes a basis for discharge, has nothing to do with merit. It is merely a condition of employment.

3. The final argument used is that the existence of an agency shop "violates an employee's right to work." Individuals who articulate this argument are really saying they want an individual to be free to work for longer hours and

<sup>20</sup> *Tremblay v. Berlin Police Union*, 237 A. 2d 668, 68 LRRM 2070 (1968).

<sup>21</sup> 70 LRRM 2042 (1968).

<sup>22</sup> 70 LRRM at 2044. On appeal the Michigan Supreme Court reversed this decision on other grounds. Following that Supreme Court decision in *Smigel* the Michigan Public Employment Relations Act was amended to specifically authorize the negotiation of an agency shop clause requiring "as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equal to the amount of dues uniformly required of members of the exclusive bargaining representative . . ." Mich. Comp. Laws Ann. Section 423.210(1) (c), as amended by Act 25, L. 1973.

lower pay with the employer determining terms and conditions of employment in a unilateral manner. Professor Seligman summed up this argument 65 years ago:

"The right of the individual to work, is indeed . . . a sacred and imprescriptible right; but the conditions under which this right is to be exercised are by no means a matter of mere individual discretion and of social unconcern. We are beginning to see that the securest guarantee of liberty is the social sanction—that true and permanent freedom is at bottom an outgrowth of the social forces, and that individual bargaining results in a mere empty husk of freedom."<sup>23</sup>

The provision in H.R. 10700 is totally unique. It provides that although a union has exclusive recognition in a unit it is merely "entitled to represent and bargain collectively for employees in the unit." There exists no provision mandating the union to represent the employees in the unit. This has been interpreted to mean, by the sponsors of the legislation, that a union could negotiate a collective bargaining agreement covering only members. Such an arrangement increases instability and would perhaps fail in its intended effect.

Neither the National Labor Relations Act nor the Railway Labor Act contains a mandatory requirement that the exclusive representative perform a representation function for the non-member. However, the Supreme Court in *Steele v Louisville & N.R. Co.*<sup>24</sup> and *Vaca v Sipes*<sup>25</sup> established the principle that the exclusive representative has the obligation and duty to represent nonmembers to the same extent as members. Therefore, it is certainly not clear that a union could negotiate only for the benefit of its members.

However, even if this were true, it would lead to great instability. The union would negotiate a contract and employees could join and quit their membership on a daily or weekly or monthly basis as they "needed" the agreement.

In addition, the language has the effect of forcing Federal employee unions from the Federal sector through bankruptcy. All an agency need do is conduct long, expensive negotiations for the benefit of union members and then grant the same benefits to non-members through regulation. H.R. 10700 would have the effect of discouraging membership in unions and ending all union activity in the federal sector.

D. H.R. 9784 GUARANTEES A REALISTIC LABOR RELATIONS PROGRAM BY PROVIDING FOR THE RIGHT TO STRIKE

Historically, strikes by public employees have been prohibited by statute<sup>26</sup> or by court decision.<sup>27</sup> The Supreme Court by denying review in two cases refused to overturn two cases which held that public employees do not have a constitutional right to strike.<sup>27</sup> The question of "right" to strike is actually irrelevant when considering that public employees can and do strike. The nationwide record of strikes is as follows:

1958—15	1963—29	1968—254
1959—26	1964—41	1969—411
1960—36	1965—42	1970—412
1961—28	1966—142	1971—329
1962—27	1967—181	1972—375

<sup>23</sup> E. R. A. Seligman, *Social Aspects of Economic Law*, Proceedings, American Economic Association, 1903, Part I, pp. 57-58.

<sup>24</sup> 323 U.S. 192 (1944).

<sup>25</sup> 386 U.S. 171 (1967).

<sup>26</sup> Delaware, Florida, Georgia, Hawaii, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New York, Ohio, South Dakota, Texas, Vermont, Virginia and Wisconsin. Duff, *Labor Law: Right of Public Employees to Strike or Employees in Work Stoppage*, 37 ALR 3d 1147. See, generally, Howlett, *Labor Relations Problems in the Public Sector: The Right to Strike* 53 *Chicago Bar Record* 108 (December, 1971), reprinted in *International Society of Barristers*, Vol. 7, No. 4, pp. 36-44 (October, 1972), and in 1971 *Labor Relations Yearbook*, 98 (BNA).

<sup>27</sup> See Illinois: *Board of Education of Community Unit School District v. Redding*, 32 Ill. 2d 587, 207 NE 2d 427, 59 LRRM 2406 (1965); (but see *City of Pana v. Harold Crowe and AFSCME Local 726*, 13 Ill. App. 3d 90, 299 NE 2d 770, 83 LRRM 3060 (Ill. App. Ct., 1973) which held the Illinois Anti-Injunction Act applied to public sector strikes); Florida: *Pinellas County Classroom Teachers Association, Inc. v. Board of Public Instruction, Pinellas County, Florida*, 214 So. 2d 34, 69 LRRM 2466 (Florida Sup. Ct. 1968); Indiana: *Teachers, Local 519 v. School City of Anderson*, 252 Ind. 558, 254 NE 2d 329, 37 ALR 3d 1131, 73 LRRM 2601 (1970); Kentucky: *Jefferson County Teachers Association v. Board of Education, Jefferson County*, 483 SW 2d 627, 75 LRRM 2486 (Kentucky Ct. of App., 1970); Maryland: *Board of Education, Montgomery County v. Montgomery County Education Association*, 87 LRRM 2745 (Md. Cir. Ct., 1968); North Dakota: *City of Minot v. Teamsters No. 74*, 142 NW 2d 612, 62 LRRM 2283 (N.D. Sup. Ct., 1966).

<sup>27</sup> *Teachers Local 519 v. School City of Anderson*, 252 Ind. 558, 254 NE 2d 329, 73 LRRM 2601 (1970), cert. denied, 399 US 928, 74 LRRM 2552; *Postal Clerks v. Blount*, 325 F. Supp. 879, 76 LRRM 2982 (DDC, 1971), cert. denied, 404 US 802, 92 S. Ct. 80, 30 L. Ed. 2d 38, 78 LRRM 2463 (1971).



As a result of the reality of the strike, seven states have enacted legislation which allows strikes under certain circumstances.<sup>28</sup> Generally these statutes divide employees into two or three categories, determined by the essentiality of the service they perform. If a strike, or the continuance of a strike beyond a specified period, will endanger the public health or safety an injunction will issue.

In addition, two states have Supreme Court decision which have the same effect. In *School District of the City of Holland v. Holland Education Association*, 380 Mich 314, 157 NW 2d 206, 67 LRRM 2916 (1968), the Michigan Supreme Court reaffirmed the constitutionality of the statutory strike prohibition but held that an injunction, as an extraordinary legal remedy, does not automatically issue because the strike prohibition law has been violated. An injunction may be issued only after evidence has persuaded the court that the public employer seeking the injunction has come to court with "clean hands" by compliance with its statutory duty to bargain, and that an injunction is necessary to prevent "irreparable damage" a phrase which the circuit court judges have interpreted to mean damage to the public health and safety. Recently the Supreme Court of Rhode Island adopted the same rationale.<sup>29</sup>

In spite of the prediction of bankruptcy and despair attending state statutes granting the right to strike the opposite has been the fact. In 1970, Pennsylvania legislated a right to strike for public employees. Subsequently in 1973 a joint House-Senate Committee of the Pennsylvania legislature held hearings concerning the experience after the first three years of the legislation. During the hearings the right to strike portion of the legislation received relatively little attention. Harry Boyer, President of the Pennsylvania AFL-CIO testified that the incidence of strikes diminished after the right to strike was granted. And there was little pressure concerning the removal of the strike right.

H.R. 9784 builds on the experience of the states and most particularly the experience of the Canadian government. In 1967 the Canadian government passed the Public Service Staff Relations Act. This act set up a system of collective bargaining between civil service employees and the government. A feature of the act was the right of the civil service employees to strike. After an extensive survey of the Canadian experience Congressman Wilson in a report to Congressman Dulski concluded:

"The visit to Canada clearly showed the success of the Canadian law. The net result is more responsive management and more responsible union leadership. In Canada this system has proven to be a realistic and effective method of promoting equality between labor and management while guarding against capricious, lengthy, and debilitating strikes.

"The Italian, German, and French Constitutions guarantee the right of public employees to strike. Sweden, Norway, and Denmark authorize such by statute. In Latin America, the right to strike by government employees is recognized by most countries. Mexico, our closest neighbor, has the right to strike by constitutional amendment. In fact, the only two modern industrialized nations that prohibit their government employees from engaging in lawful strikes are the United States of America and Russia. In fact, two of our own States, Hawaii, and Pennsylvania, have a limited right to strike for State and local employees.

"There are many arguments both for and against the right to strike, but as Judge Wright said in a district court decision involving postal employees: 'It is by no means clear to me that the right to strike is not fundamental. A union that never strikes, or which can never make a credible threat to strike, may wither away to ineffectiveness.'"<sup>30</sup>

The impasse procedure in H.R. 9784 which culminates in the right to strike is modeled on the successful Canadian system. Either party may declare that an impasse exists and request the Federal Mediation and Conciliation Service to appoint a mediator. The mediator must be appointed within five days. If the mediator is unable to resolve the outstanding matters within 15 days, the issues are submitted to factfinding. At this point the union must decide whether the report of the factfinder will be advisory or binding. If it is to be binding, the union must accept the report; and if the report is not binding, the union has the right to strike. The work of the factfinder must be completed within 30 days. If the report is not binding and the employees strike, the employer may obtain an

<sup>28</sup> Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania and Vermont.

<sup>29</sup> *School Committee of the Town of Westerly v. Westerly Teachers' Association*. — R.I. — 299 A. 2d 441, 82 LRRM 2567, at 2370 (1973).

<sup>30</sup> 533 GERR F-2 (December 10, 1973).

injunction against the strike if it "poses a clear and present danger to the public health or safety which in light of all relevant circumstances it is in the best public interest to prevent." This system is fair and equitable to the parties while at the same time protecting the interest of the public.

The arguments against granting this right to strike to public employees is solidly grounded in a bed of emotionalism. Its antagonists consider that Federal employees owe a special duty to the sovereign and that a strike is a heretic action against His Majesty. In addition, it is argued (1) that the government performs essential functions; (2) there is lacking in the government a profit motive which forces the public employer into an unequal bargaining posture because the public employers main concern is with maintaining a functioning government; and (3) if public employees have the right to strike they can exert disproportionate pressure in the political arena.

We fail to understand why public employees by definition have a "higher calling" to the "sovereign." Public employees must feed their families and educate their children, and they have the same desires and goals as all other working people. Public employees are no different from their counterparts in the private sector:

"Government employees like their counterparts in private enterprise are subject to the same vicissitudes of insecurity of employment, rising prices, accident, illness and old age. Everywhere, from the remotest corners of the earth to the most sophisticated, people seek to assert a measure of control over the conditions under which they live. The public employee, no less than his private counterpart, labors under the same apprehensions and frustrations and seeks the same measure of fulfillment from his daily chores."<sup>31</sup>

The argument that all government employees perform essential services is specious. Many industries and service performing enterprises in the private sector have a greater impact on the economy and on the lives of people than do public employees. For example, a railroad strike which is legal could cause greater damage to the economy than a strike of city bus drivers. Moreover, some work at ASAN flight centers is contracted out to private industry. In that case, for no logical reason, the carpenter working for the private employer can strike, whereas the carpenter working for the Federal government performing the exact same function cannot strike. However, a strike by the private sector carpenter has the same effect as if the carpenter were employed by the Federal government: work stops on the rocket.

Furthermore, according to the Bureau of Labor statistics, there were 25 local government strikes by the Teamsters union truck drivers between 1965-1960. These strikes were presumably illegal. However, in 1968 there was a legal Teamster's strike involving oil truck drivers in New York City which is attributed with the death of several people.

It is clear that the distinction between disputes in which a strike is authorized and those in which it is forbidden must not be based on public versus private dichotomy, but on the true essentiality of the service rendered or product manufactured.

The profit motive argument is also lacking in substance. The fact that government is "non-profit" does not mean that no economic parameters for decision making exist. First, there is the impact of the loss of pay. The public employee has the same requirements for the necessities of life for himself and family as does the private employee. Another economic constraint is the public's concern over increased taxes. Thus, if a strike of public employees were to result in an increased tax rate, the political decision makers would be faced with the possible loss of public support. When taxpayers threaten non-support, politicians can and do listen. A third economic restraint exists where the resultant effect of the strike is direct increased cost to the public. This usually arises for such services as water, sewage and sanitation. Another economic restraint on public sector bargaining is the threat of subcontracting to private sector companies. The City of Warren, Michigan, successfully ended an impasse by subcontracting its sanitation service. The threat of doing the same ended a strike in Santa Monica, California.

<sup>31</sup> Welsenfeld, *Public Employees—First or Second Class Citizens*, 16 *Lab. L.J.* 685, 688 (1965). As early as 1955, the Committee on Labor Relations of the American Bar Association said: "A government which imposes upon private employers certain obligations in dealing with their employees may not in good faith refuse to deal with its own public servants on a reasonably similar basis modified, of course, to meet the exigencies of public service." 1955 *Proceedings, Labor Relations Law Section, American Bar Association* 125. See, also, Smith & McLaughlin, *Public Employment: A Neglected Area of Research and Training in Labor Relations*, 16 *Ind. & Lab. Rel. Rev.* (1969) 30.

An economic fact which gives the public employer even more leverage than his private sector counterpart is the public employer shows a profit after a strike. In the public sector income, (in the form of taxes) does not increase during a strike. Therefore, when no costs are incurred in the form of salaries, the profits increase. Governments budgeting a deficit may not be the least concerned with a strike because their budget as a result of the strike will be balanced.

In sum, economic restraints have the same effect in controlling public strikes as market restraints have in controlling private sector collective bargaining. Thus, if public employees were granted the right to strike, the free play of economics would act as a check and balance.

Political pressure is another major argument in the arsenal of the antagonist. It is argued that the exertion of political pressure is a proper avenue of influencing decision making in the public sector. In the Taylor Act in New York, the committee stated:

"Careful thought about the matter shows conclusively, we believe, that while the right to strike normally performs a useful function in the private enterprise sector (where relative economic power is the final determinant in the making of private agreements), it is not compatible with the orderly functioning of our democratic form of representative government (in which relative political power is the final determinant)."

Public employees are, therefore, to bargain only with the legislature and not with their employer.

Such a position ignores reality. Private sector unions negotiate collective bargaining agreements and then go to a legislature to make them better. Minimum wage legislation, pension reform, occupational health and safety, overtime, equal employment opportunity programs, etc., all embrace the private sector collective bargaining relationship. There are no critics who condemn that activity or seek to pass legislation prohibiting that activity; it is lauded and said that the membership is being properly represented.

A corollary of the same argument is that the public employee should not have two bites at the legislative process; first, by bargaining with the manager who makes a budget recommendation to the legislature based on the collective bargaining agreement and second through a "bargaining" process with the legislators over increasing the terms of the agreement yet more. Public employees and their unions should be restricted solely to the legislative process.

In answer, as previously pointed out, 33 states have some form of legislation concerning public employees. And there is no state which has revoked its collective bargaining legislation because the system has not worked.

I would also like to point out what the critics are really saying: public employees and their unions should engage only in lobbying activities. However, if political pressure is to be a viable alternative, then public employees must be given the full range of political tools. In addition to the well accepted technique of lobbying, this would include the use of campaign contributions and the removal of all limitations on political activities of the public employee through "Hatch Acts." The hazards inherent in such program are apparent and make it clear that political pressure is not necessarily more desirable than economic pressure.

Another hazard of the use of political pressure is that it may make public sector employees succumb to the political administration in office since this would be the source of the employees' political power and benefits.

And at this juncture in this Country's history, we certainly do not need a highly politicized Federal employee workforce. In the "Watergate era" the career Federal employee is unsmirched by the crud covering this city. I do not want to do anything or advocate any position which would undermine this record.

Still another effect of the use of political pressure is that certain groups of employees would be left out. Those employees represented by unions who are part of the patronage system will receive greater benefits than those who are not. Moreover, those unions who could afford large lobbying budgets would be dictating to unions who could not afford such efforts. Keeping in mind the principle of survival of the fittest, it could cause unions to reallocate their income to provide for lobbying. It is very likely that this money would come from funds set aside for on-the-job representation of employees. Such a concentration of money into political pressure could result in an inability of a union to represent. It could destroy the equilibrium of collective bargaining.

In order to achieve a proper balance, the political and economic means must coexist. Both avenues must be opened to the public sector unions as they are in

the private sector. It is only in the public section that a dichotomy exists. Private sector unions are free to engage in economic strikes and to simultaneously engage in the political process of lobbying.

#### V. CONCLUSION

The issue of whether legislation is needed in the Federal sector has been amply demonstrated. The need for independent third party review, a recognition that negotiations may realistically be expanded only through legislation, the need to redress the patently prejudicial management bias in the present program, the need to create judicial review, and a recognition of the failure of the present system to achieve the goals of the Order itself or the legitimate goals of Federal employees reveals conclusively that legislation is the only answer.

H.R. 9784 is a Bill which solves the problems inherent in the present system based upon the experience in the private and non-Federal public sector. The experience is vast, and reveals that a system which provides for meaningful negotiations in the context of relatively equal bargaining strength is necessary for the development of a labor relations program which is fair to Federal managers, Federal employees and to the public at large.

Mr. HENDERSON. I would like to ask a couple of questions. Either of you may respond, or both of you may want to comment on it. But as you mention, the right to strike, plus the right to collective bargaining—if we could assume just a moment that in the area of collective bargaining, if we don't have any problems about what is negotiable, and the union would elect to take collective bargaining, or arbitration, are we talking about binding arbitration? Or do I understand you to say that once that right has been agreed upon the union would be bound by the decision and the members would not strike?

Mr. CONNERY. That is correct.

Mr. HENDERSON. Another bit of confusion, it seems to me, is in the form of the philosophy in regard to this. It has been my feeling that binding arbitration is what management should get in return for an agreement that it would be binding upon the employees. How would you deal with a strike if it did occur after binding arbitration?

Mr. CONNERY. I would like to refer that question to our general counsel, who is an expert in this area.

Mr. TOBIAS. The courts, State legislatures and executive departments have not had a great deal of difficulty, certainly in the recent past, in dealing with people who are striking illegally in violation of various statutes.

What we provide in H.R. 9784 is based upon the Canadian system, which has worked imminently well. It provides for fact finding, which is either advisory, or binding, at the option of the union.

And the reason that it is important, that it be at the option of the union, is because of the little neglected fact that public employees actually receive a benefit from a strike through increased income in the form of taxes, and no outgo in the form of salary.

Now, we often hear the arguments against the right to strike, that there are no economic restrictions on decisionmaking on the public employer. However, when he is faced with an unbalanced budget, we have also seen some public employer managers, who are very content to let the strike go on while they were taking in all of that money and aiding their budget.

Mr. HENDERSON. One other question that is a follow-on. You have mentioned that the Canadian system is working so well. If we were to determine that this system is not working so well, would you change your basic philosophy in support of Mr. Ford's bill?

Mr. CONNERY. No. As a matter of fact, I would respond to that in this fashion.

Congressman Charles A. Wilson, is doing a very comprehensive significant study of that matter.

Mr. HENDERSON. I notice that in your statement. I am also familiar with it, but I was just, for a moment, assuming that the findings that he made at that time were not true, and at this, or at some future time, would you change your position on it?

I get some evidence that things are not going so well in Canada.

Mr. CONNERY. I wouldn't change my position on that. As we pointed out in our statement several times, this is an evolutionary process. We think that H.R. 9784 adequately deals with this in that it provides flexibility. And if things change, the situation can be altered.

Mr. HENDERSON. Now, one more question. Am I correct in assuming that basically in your position on this legislation you are saying that for full collective bargaining, just as we do in the Wage Board sector, we should move away from the same pay for the same job classification in the GS sector?

Mr. CONNERY. Yes, as I understand your question, that's precisely what I am saying.

Mr. HENDERSON. And you are specifically saying that if the Treasury Department, where you work, has persons performing at the same responsibility in one area of the country and that persons should receive pay differently from that same work, same responsibility, in another area of the country.

Mr. CONNERY. I want to answer that in several ways, Mr. Chairman.

I can assure you that right now in the Treasury Department employees are being paid differently for the same work in different parts of the country because of the present classification system and the grade levels assigned.

For example, in the Internal Revenue Service, we have revenue officers that are being paid in the Southeastern part of this country at different levels than employees performing the same work in other sections of the country. The grades are higher. As a matter of fact, our membership has continuously complained about this.

This is a result of the Civil Service Commission's classification and pay system. And not being able to deal with it adequately, as H.R. 9784 advocates, they have created these injustices.

In New Orleans, or in Atlanta, there are persons who are carrying on the same responsibilities as Internal Revenue agents in New York City and they don't get the same pay right now.

What we are pointing out in this statement is that if a group of people acting in a legitimate community of interest—

Mr. HENDERSON. On the first part, may I stop you just a minute? You related that agents in other parts of the country, New Orleans, get

less money than agents in New York. By your testimony, you are suggesting that these things are proper.

Mr. CONNERY. Absolutely not. I am suggesting that it was——

Mr. HENDERSON. And that the relation of the management of the Ford bill at full collective bargaining would bring it about; wouldn't that be the result?

Mr. CONNERY. Not necessarily. What you are pointing out here is this, I think. If I am in Atlanta, and myself and my fellow employees wish to negotiate matters relative to our working conditions and pay, then we can and should be allowed to.

Now, if for whatever reason some other group said, "We will have nothing to do with this," then under this concept they could stay where they were. If that's what their wishes were, we are not seeking to, as a previous witness indicates, bludgeon anyone.

Mr. HENDERSON. I think you responded.

Mr. Ford?

Mr. FORD. Well, I don't think there is a question of any difference in whether that result is obtained. The question is, the process by which you would arrive at the result. The bill that I have introduced, as distinguished from the unilateral process, provides for a procedure which enables employees involved to participate in the collective bargaining process.

Mr. CONNERY. That is correct, Mr. Ford.

Mr. FORD. Mr. Hampton testified at some length. Unfortunately, I could only be with him the first day. He attempted to demonstrate to me, and that there is no need for collective bargaining in legislation, because the present system using Executive orders is adequate.

Why do you think it is not possible to carry out a true collective bargaining under the present system?

Mr. CONNERY. Well, I think it is impossible under the present system because there exists no credible third-party review. And the scope of bargaining is extremely limited at the present time primarily due to an all-inclusive management's rights clause, which prohibits anything that could be remotely termed "collective bargaining." Certainly, we have the experience of the pay council.

That has been a very bad one. And the Federal Labor Relations Council, which Mr. Hampton chairs, is certainly not third-party machinery, as he called it, in any sense. He is, in fact, a supermanager with supervisory rights over other management in the Federal Government.

Mr. FORD. In deference in what I perceived to be rather severe reaction, my recognition is that Mr. Hampton acknowledged that sometimes it is difficult to know whether he is management, or the arbitrator.

Mr. CONNERY. That is particularly ironic to me.

Mr. FORD. And that he has personally found it uncomfortable to try to occupy both of these roles as they bounce back and forth.

Mr. CONNERY. Yes. He was indicating, as I recall, that he could not support the legislation which we are calling for because of some 3,400 bargaining units in the Federal sector.

Now, as I indicated a moment ago, that's particularly ironic to me, because it was Mr. Hampton, himself, who created these 3,400 units. Mr. Hampton and the Commission, in the late 1960's, insured that there would be proliferation of small units. As a matter of fact, they interjected themselves into a bargaining situation between our union and the Internal Revenue Service.

The Internal Revenue Service wished, for reasons of their own, to accede to our requests to compress into three units what heretofore had been 69 separate bargaining units.

Mr. Hampton opposed that and told the Internal Revenue Service he wished the multiplicity of units to continue. And then he comes up here a couple of weeks ago, and tells you that one of the reasons your bill would be problematic, is because, "I have so many units to contend with."

He, himself, set the policy.

Mr. FORB. We have already been into the right to strike.

Especially in light of the testimony that preceded you, why do you feel that the agency shop provision should be included in the Federal collective bargaining legislation?

Mr. CONNERY. Well, I feel very strongly about this, Mr. Congressman, for this reason.

Basically, the agency shop provision is traditional in the private sector. It has worked well. It has created a great deal of the stability which you spoke of before. The duly elected representative of a unit must negotiate certain rights and benefits for all the members of that unit. It is only fair to provide that everyone within that unit contribute on a pro rata basis.

Secondly, an agency shop creates the stability that is so necessary in a labor relations program in this big Government.

It eliminates free riders, those people who are very willing to take advantage of the benefits that has been obtained for them by others. And it does stabilize a labor relations program by giving a union the wherewithal to procede on the behalf of all those it represents.

And I might mention this. We recently obtained the largest judgment in Federal judicial history, \$533 million, for all Federal employees in our precedent setting law suit against President Nixon.

Interestingly enough, a columnist for the Washington Post suggested in an article that the employees of the Department of Labor, who have received their back pay award, might care to send the union a dollar out of their retroactive check.

Well, I would be glad to give you an account right now of how many dollars we got.

Mr. FORB. Well, unfortunately, whether we are dealing with private or public sectors, the Agency shop concept is not well understood, and it gets all mixed up in the rhetoric of talking about people's individual right to work, and other code phrases. It's become intermixed in the concept of compulsory unionism, and for this reason we will have to educate people with regard to this, because we are dealing with many people who have not been confronted face-to-face with any collective bargaining legislation—either private or public.

Which brings us again to the basic proposition that Mr. Hampton insisted on: that there is no legitimate relevance between the experience in the private sector of collective bargaining.

It is my impression as a member of another committee that has considered this issue with respect to other public employees, that the pattern being established across the country at the State and local level of government is to favor exclusive bargaining rights, and in some cases, union shop, and through other cases and agency arrangements.

Is that consistent with your observations about the evolutions taking place now?

Mr. CONNERY. Yes, absolutely.

Mr. FORD. And have they not, as a matter of fact, in developing labor-management relations patterns in other levels of the Government, followed as closely as possible the experience of the private sector in the National Labor Relations Act?

Mr. CONNERY. Yes.

Mr. FLYNN. Mr. Congressman, if I may, I have gone through five legislatures getting State collective bargaining laws through. The arguments have been very similar in every one of them. However, there isn't one of them that would ever want to go back to anything less than exclusive representation. That is just an invitation to chaos, and the worst kind of elemental warfare in the union.

One of the real benefits of a bargaining law is the whole business of getting a few significant representatives, or responsible agents, with whom to do business.

Mr. FORD. I would like to make an observation.

I noticed in your statement you made reference, Mr. Connery, to the fact that we are the only nation in the free world without statutory bargaining rights for our public employees. Moreover, the only one in the free world with an absolute prohibition across-the-board with the right to strike—I have used that same statement—but I would like to state it in a way that has been referred to me.

There have been only two major industrialized nations in the entire world, the United States and the U.S.S.R., which absolutely prohibit the right to strike from public employees.

I don't think that the Congress is going to be very impressed with the knowledge that we are the last two remaining holdouts, and that the pattern accepted by Russia is one that necessarily we want to adopt for this country.

Mr. CONNERY. Well, as you know, that report impressed me also. And, likewise, I was very impressed with the conclusions of Judge Wright that are quoted in that report. Without the right to strike, in Judge Wright's view, or a union that never strikes, or which can never make a creditable threat to strike, would wither away to ineffectiveness. And I believe that 100 percent.

Mr. FORD. Thank you very much.

Mr. HENDERSON. I want the record to be clear—perhaps it was not as clear as it could be in my earlier comments with regard to collective bargaining for pay.

You are also suggesting that collective bargaining in the scope of the Ford bill would go to all fringe benefits as well?

Mr. CONNERY. Yes.

Mr. HENDERSON. Retirement benefits and so on?

Mr. CONNERY. Yes, absolutely.

Mr. HENDERSON. Do you have a feeling that the majority of the Federal employees are ready for that?



Mr. CONNERY. Well, if they aren't, they are far more obtuse than I think they are, Mr. Chairman.

For example, there is a committee called the Federal Advisory Committee on Health and Life Insurance Benefits. Now the record is very, very clear, because we were the ones that were, for the most part, helping to assist Congressman Waldie in a problem with Blue Cross. The record clearly shows that the Civil Service Commission never even consulted the unions that had representatives on that board relative to the benefits and the rights that were given to the carrier. And they permitted a \$95 million ripoff to be given to the Blue Cross-Blue Shield. And that's because the unions weren't represented.

Mr. HENDERSON. Let me interrupt for a moment.

That was a ripoff, but everybody was ripped off to some extent; weren't they?

Mr. CONNERY. Well, just because I share a pro rata part of getting the shaft, doesn't make it right.

Mr. HENDERSON. But couldn't I argue on the other side of that under the Ford bill, those unions that are able to get a better deal have shafted the other employees whose unions are not so effective?

Mr. CONNERY. Not at all, because the Ford bill creates no compulsion on anyone. I submit to you that if I am doing a job for a certain group of employees, and I can point to my record as having done a job for them, there is nothing in the Ford bill that will stop them from joining me in throwing the other rascals out.

Mr. HENDERSON. Well, are you talking about the ultimate that we would have one union in the Federal Government—

Mr. CONNERY. Absolutely not. As a matter of fact, even under the present conditions we have successfully campaigned against the largest unions. I have been president of this union since 1966 and never once have we lost a contested election.

For example, against AFGE, or NFFE—and they are considerably larger than we are—we have never lost an election. So certainly I am not advocating this. As a matter of fact, we have testified precisely against this point. AFL-CIO president George Meany, has suggested a certain type of bargaining arrangement that would have absolutely frozen out of the bargaining any union such as ours.

We don't believe in the concept of just one union having the right to speak for everyone. We don't believe in that at all.

Mr. HENDERSON. Well, should our legislation provide that there could not be any bargaining with more than one agency of a Government?

Mr. CONNERY. We advocate as a union bargaining at the agency level or the departmental level.

Mr. HENDERSON. How would you treat that in the Defense Department? Would you break that down to the services?

Mr. CONNERY. Well, I am not that familiar with the Defense Department.

Perhaps counsel is more familiar with their structure.

Mr. TOBIAS. The way we have defined units in H.R. 9784 is consistent with the language under the Executive order. And that language allows for larger units. And what the Federal Labor Relations Council has done is to interpret that language in the narrowest possible sense. It is doing nothing to encourage multiunit bargaining, or consolidation of units.

We recognize that four or five or six employees are not nearly enough for conducting bargaining. But that doesn't mean that those people don't have rights, and that they aren't entitled to be represented.

Mr. HENDERSON. I was trying to get the other side of the picture. And that is how high up you would go with unit recognition?

Mr. TOBIAS. Unit recognition is a definition which cannot be confined to any particular level.

The definition that is contained in H.R. 9784 says that bargaining should be coextensive with the unit of recognition.

Now, if the unit of recognition is at level A, that's where bargaining is; full collective bargaining. It is at that level that an Authority or Board has stated clearly that there is a community of interest among the employees and that it is efficient for the Government operations. And it is at that level that full collective bargaining would take place, whatever the level is.

Mr. HENDERSON. As I understand it, Mr. Connery, you represent the IRS.

Mr. CONNERY. No, sir. We also have units in the Customs Service and the Bureau of Alcohol, Tobacco, and Firearms. Actually, IRS makes up 80 percent of the entire Department.

Mr. HENDERSON. Then do you have an agency on all of the units?

Mr. CONNERY. We have nationwide bargaining with IRS covering all of the units that we represent under exclusive recognition. We have negotiated agreements covering all of the employees.

Mr. HENDERSON. Yes, they do have uniformity; but uniformity even under the present system, is not uniformity.

Mr. CONNERY. Well, uniformity, I believe, Mr. Chairman, in and of itself is not necessarily good. You see, we are terribly restricted in our negotiations.

Mr. FORD. I think we are back to the original question: the example of lack of uniformity in units to pay scales, or the establishment of rights. That's not a matter that is covered by your collective bargaining process; is it?

Mr. CONNERY. No, sir.

Mr. FORD. So what you are talking about, unfortunately, about the uniformity, whether considered only on those items that IRS bargains with you on.

Mr. CONNERY. That's correct.

Mr. FORD. And the outstanding example of people that was cited a few months ago about the language of uniformity was outside the process?

Mr. CONNERY. That's correct.

Mr. HENDERSON. Mr. Connery, one further question:

Under the provision of the Ford bill, would you envision that your negotiations for pay and benefits would be for the IRS standard contract, standard pay? Or would your negotiations with regard to pay and benefits be conducted at lower levels which, obviously, would then fall into geographic areas?

Mr. CONNERY. We have our chief contract negotiator, which I mentioned, Mr. Chairman, with us. And I would ask Mr. Tobias to respond to that.

Mr. TOBIAS. We would conduct negotiations wherever we have exclusive recognition.

If we, together, with the IRS were to determine that the most efficient way to conduct negotiations was at the national level, then the contract would be negotiated at the national level. It would still allow us to negotiate regional or local variations in the contract. Instead of negotiating for each separate unit throughout the country, we could negotiate one agreement which would still recognize the diverse needs of various groups of employees in different areas of the country.

Mr. HENDERSON. Dr. Wolkomir was very positive in his opinion. I wonder if you would like to express yourself with regard to the possibility of enactment of legislation with the right to strike at this time?

Mr. CONNERY. Well, Dr. Wolkomir was very positive in his opinion when he told people in other parts of the country he was going to defeat me in an election. He never has; but I don't agree with Dr. Wolkomir. I wouldn't say I am in total disagreement, but the gulf in his philosophy and mine is so wide that I couldn't possibly attempt to bring it together. I don't agree with Dr. Wolkomir's testimony in the main at all. I don't agree with the thrust of it.

Mr. HENDERSON. How do you feel about H.R. 13 as a legislative vehicle?

Mr. CONNERY. Well, I know Mr. Tobias has made quite a study of this, and I would ask him to respond to that.

Mr. TOBIAS. H.R. 9784, first of all, is better drafted than H.R. 13. H.R. 13 is a lawyer's dream. It is a lawyer's right to work act. It would require litigation over a period of time on issues which would be clearly legislated. For the most part the difference between H.R. 9784 and H.R. 13 is the fact that H.R. 9784 provides for a limited right to strike, after exhausting the collective bargaining, mediating, and fact-finding processes.

Mr. HENDERSON. Let me agree with your statement with regard to H.R. 13. I just don't find any real strong support that it is a workable piece of legislation. What would we do with Mr. Ford's bill if we took the right-to-strike out and left the main, or all the rest of the bill intact? Would you consider it a workable piece of legislation?

Mr. TOBIAS. It is imperative to true negotiations that the parties in the collective bargaining process sit at the table as equals. When one person can dictate to another, as in the present system, you don't have bargaining; you have dictation.

You must have the collective bargaining process be an efficient problem-solving mechanism. You have to make the parties equal. One method that we have in the collective bargaining process for making the parties equal would be to permit employees to withhold their services.

Mr. HENDERSON. Let me ask the question the other way:

If we were to take the bill H.R. 10700 and you used that and it provided the right to strike, after all the other administrative procedures were afforded, would that be workable?

Mr. TOBIAS. I don't think that would be workable at all, Congressman, because of the numerous problems in H.R. 10700.

For example, the problem of the management's rights clause, the problem of allowing the President to exclude large numbers of people from bargaining units on his own volition, the question of negotiating

regulations in a nonworkable system, because under that system you don't negotiate directly with those who are responsible for representing employees in units.

H.R. 10700 allows for statutory appeal procedures, rather than negotiated procedures. Adverse classification actions, EEO matters and many other matters would be carved out of the collective bargaining process.

So tacking the right to strike on H.R. 10700 would not solve the problems in the Federal sector.

Mr. HENDERSON. If the Congress decided that it was not going to enact the Ford bill, would you prefer that it take no action rather than enacting H.R. 10700 at this time?

Mr. CONNERY. No. I think most everyone that I know of that works under the present systems agrees that it is a disaster.

The Ford bill contains a number of beneficial provisions, but just not having a right to strike certainly wouldn't withdraw our support from the Ford bill. But we would hope to have it because, as I mentioned before in my testimony, I was very impressed with the realistic thinking that was offered by Judge Wright when he said that if you don't have a right to strike—

Mr. HENDERSON. What I was trying to elicit from you is whether H.R. 10700 is better than the present system.

Mr. CONNERY. I think H.R. 10700 is as close to the present system as any of the bills.

Mr. HENDERSON. Very decidedly so.

Mr. TOBIAS. The only real difference between H.R. 10700 and the Executive order system is that it is legislation. And it would presumably, although not clearly, allow for judicial review of actions by a board. It is really not solving the present problems; it is merely replacing the Executive order with legislation rather than meeting and dealing with the problems which have been apparent for 12 years. It is not as though we are coming here and saying, "Look, legislation is needed and we don't have any experience."

The experience is there. And I think that it is really not fair to just put legislation in effect without dealing with the problems which are so apparent.

Mr. HENDERSON. I think your testimony has been very helpful.

Mr. Ford, do you have any questions?

Mr. FORD. Well, one might be restrained on the basis of almost universal testimony, as far as the present system having to be improved by making whatever system we have statutory, that something is better than nothing.

From my own point of view, if we are talking about reporting the bill this year, I would say we know that. But if we are talking about reporting it next year, I might be willing to take a chance that we might study my bill on the floor.

Mr. CONNERY. We would agree with that.

Mr. FORD. But I also would like to say that I don't agree with it fully, with the blanket criticism of H.R. 13, because I think that philosophically H.R. 13 is striving in the same direction as my bill.

And while we have differences—and some of my friends and neighbors have been quite outspoken on the differences of my bill—those are

the kind of differences that are not differences in the philosophy, but in the specifics of how you achieve that philosophy.

With regard to trying to make a bill palatable by removing the right to strike and being left with the very basic concept of it, what's the alternative?

The question is, if you are not going to have the right to strike, there has to be some alternative to it to force the parties to a crisis. And when that crisis occurs, then we will bargain with a good deal of pressure on them. That's the only way you're going to get collective bargaining.

The alternative, as generally suggested, is compulsory arbitration. How would you describe compulsory arbitration?

Mr. TOBIAS. Well, there has been a great deal of experience with compulsory arbitration and those criticisms are all well documented. And the criticisms are that with compulsory arbitration you are not really bargaining. You are always saving something for the arbitrators. You can't put your last position on the table because the arbitrator is going to shave from it. You are always holding something back. And if you believe in the collective bargaining process then the decision is clear. This is my last offer, and it is either that, or it is something else. And if you believe in the process of parties resolving their own problems, then compulsory arbitration is inconsistent with that philosophy. And that's the problems we see with compulsory arbitration.

Mr. FORD. A year or so ago I heard of a study indicating that when you consider public employees across the board, that compulsory arbitration is a very efficient way to deal with collective bargaining because it is not economically sound from management's point of view.

In order to get your members to support your hard position, as described by those with whom you bargain in a strike situation, they have to recognize it and lose their paycheck in the exercise of that right.

Under compulsory arbitration generally what happens is a pattern develops of an annual set of demands by the employees' disagreement with the employer. And then the whole process is triggered off and everybody collects their paycheck while this process takes place.

In the private sector, where the strike is the ultimate weapon, there has been developed an almost universal pattern. In those areas where compulsory arbitration and some form of automatic arbitration plays, there is some public experience with it. The generation of a set of demands for economic motions of the package is annual.

So what you actually do is dictate that there will be an annual question, or pay increases, fringe benefits increases, and so on. And you view from the conservative point of view that that is likely to hold the fringe benefits in a reasonable line with what the rest of the economy places as a value.

Mr. TOBIAS. We would agree with that.

Mr. FORD. I think I would find myself in very interesting company. And we find that the characteristic of prolabor and common characteristic of—I don't want to say antilabor because I don't know any antilabor Congressmen—but a characteristic of such Congressmen whose philosophy differs from the prolabor approach is that in sus-

picion of the process we find ourselves voting together against compulsory arbitration.

Mr. HENDERSON. We sometimes call it a right to work.

Mr. FORD. No, I am not referring to it in that regard.

Mr. HENDERSON. We have clearly put on the record the various views that I am sure will be most helpful to us. We have got the record even though we have kept you beyond 12 o'clock.

I appreciate your very informative answers and responses. Thank you very much.

[Whereupon, at 12:35 p.m. the hearing was concluded.]

## FEDERAL SERVICE LABOR-MANAGEMENT LEGISLATION

THURSDAY, JUNE 13, 1974

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met at 9:40 a.m., in room 210, Cannon House Office Building, Hon. David N. Henderson, chairman of the subcommittee, presiding.

Mr. HENDERSON. The subcommittee will come to order.

The Subcommittee on Manpower and Civil Service is continuing hearings this morning on 25 bills that have been introduced on Federal labor-management relations. Some of the other members of the subcommittee have indicated to us that they will be here in just a few minutes but I think that under the constraint of the time we have this morning we will go ahead and begin to receive the testimony. I'm sure that all the members when they arrive will have ample opportunity to ask questions of the witnesses that they wish.

It's my pleasure to yield to one of the new members of our full committee and while not a member of this subcommittee, Mr. Moakley has indicated in the short time that he has been a member of our full committee intense interest in the welfare of the civil service employees and certainly has taken an interest in the legislation that is before us this morning. I'm just delighted that he took the time to come down and introduce the first witness this morning. I hope that if he's not able to stay he will certainly look at your testimony as presented. It's my pleasure to yield to Mr. Moakley.

Mr. MOAKLEY. Thank you very much, Mr. Chairman.

It's my pleasure to introduce to the subcommittee and the staff a gentleman that I have had the pleasure of knowing for many years on the Massachusetts scene. He's been closely identified to various civic drives and I have had the pleasure to work with him and I'm very happy to welcome him here this morning to give his testimony as president of the National Association of Government Employees, and I refer to Mr. Ken Lyons.

It's very nice to have you here this morning to testify before the subcommittee. Also with Ken are two gentlemen, the executive director, Allan Whitney, and also legislative counsel, James L. O'Dea.

As I say, Mr. Chairman, I have had the pleasure of knowing Mr. Lyons many years and not only in his capacity as president of the National Association of Government Employees but also as he's been interested in things going on in Massachusetts.

The latest thing, Mr. Chairman, and you and I have talked about it, is the Boston Naval Shipyard where he coordinated the efforts of many Congressmen in trying to keep the yard open, and, of course, the administration had a different idea over which we had no control, but nevertheless, we go forward with what we have and we are very happy to welcome you and your organization this morning, Mr. Lyons.

Mr. HENDERSON. Mr. Lyons, it's certainly my pleasure to add my word of welcome. I certainly know that we have had you before us in past times and we are delighted to have you this morning. I think it's fair to say that we have perhaps seen from time to time more of Mr. Whitney who's worked with us, but he's always represented you and been very helpful to us and the staff. We are just delighted that you're here this morning and from your long experience as president of NAGE I know of no one whose testimony would be of more importance to us on the legislation we have before us. It's my pleasure.

**STATEMENT OF KENNETH LYONS, PRESIDENT, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY ALLAN WHITNEY, EXECUTIVE DIRECTOR, AND JAMES L. O'DEA, LEGISLATIVE COUNSEL**

Mr. LYONS. Thank you, Mr. Chairman, and of course, thank you very much, Congressman Moakley.

We appreciate being granted the opportunity to testify on this important legislation. The review of executive branch experience in labor relations being conducted by this subcommittee is of particular significance to our organization, in that the National Association of Government Employees was formed at the time that President Kennedy issued Executive Order 10988 in 1962, giving Federal employees their first opportunity to have a voice in the establishment of working conditions and personnel policies.

Since the advent of Executive Order 10988, and the birth of the Federal Government's labor relations program, there have been more administrative revisions to this program than to any of the systems based on statute, even the 30-year-old National Labor Relations Act. Admittedly, during this last decade, many positive results have been achieved. All the statistics presented by the Civil Service Commission regarding the advances in union recognition and in collective bargaining, and all the comments made by Mr. Hampton in his 2 days of testimony, show clearly that the unionization of Federal employees has been in the best interest of the Government.

For this reason alone, the Federal Government should act to guarantee this right by law for all Federal employees. Acting under an Executive order, as we have, is tenuous at best. There is no specific legal safeguard to prevent its elimination or even unilateral modification.

Working under these conditions is an exercise in frustration—no one can know how far down the road they can depend on a stable structure within which to operate. The stability of law is necessary to an effective labor-management relationship and this can come only from the Congress.

As was pointed out by the Civil Service Commission, numerous statutory systems and bodies have been established, such as the Federal



Employees Pay Council, and the Advisory Committee on Federal Pay, both created by the Congress in the Pay Comparability Act of 1970. Most recently, we have seen the recommendations of both these bodies overruled by the President's agents, necessitating Senate action to assure minimal equity.

The Congress, in Public Law 92-392, also created the Federal Prevailing Rate Advisory Committee, of which the NAGE is a member. This statutorily created body is permitted to recommend action regarding wage grade employees to the three Civil Service Commissioners who, of course, are Presidential appointees.

The laws, then, allowing for union involvement in white collar and blue collar pay and working conditions are advisory only and our advice is often not followed. The union side of the table in the Federal sector is disproportionally limited in its role and in its impact. There would be greater fairness to both sides if there existed a statutorily created authority, with established rules and regulations, to provide a framework within which unions and agencies might have an equal voice as to conditions affecting employment.

The presently existing organizational elements of the Commission and the Labor Department could, in some instances, be incorporated into this Federal Labor Relations Act. There obviously is a great weight on an organization that must function as both the personnel arm of management and the administrative appeal body. The Civil Service Commission writes the Federal Personnel Manual, reviews various agencies' personnel policies, runs training programs for, and gives advice to, management officials on personnel policies, provides a nationwide appeal apparatus, and sets job standards by which employees are graded and paid.

Creating a Federal Labor Relations Authority and/or Board, as do all the bills under discussion here today, is a logical step in assuring fair and effective labor-management relations. This would not eliminate the legitimate role of the Civil Service Commission, serving as the personnel authority for the Government. The Department of Labor's responsibility is exercised by the Office of the Assistant Secretary for Labor-Management Relations and it would be quite reasonable to transfer this responsibility to the new Board. In fact, the present Assistant Secretary could even serve as one of the Board members to provide continuity.

The Federal Service Impasse Panel could, in like manner, be incorporated into the Board structure. This one-board concept would eliminate the present piecemeal authority exercised by different unrelated bodies. In fact, the final appeals body, the FLRC, is by definition a court of last resort from management actions made up of managers: The Chairman of the Civil Service Commission wearing one of his many hats, the Director of the Office of Management and Budget, and the Secretary of Labor. We do not question the integrity of these gentlemen, but rather question their ability to be both party and judge in Federal labor cases.

As a labor union, even though operating only in the public sector, we feel strongly about the question of negotiability with regard to personnel policies and conditions of employment in executive, as well as the legislative and judicial branches of government.

There is no reason to deny coverage to Federal employees by some blanket exclusion, like "national security" or some other catch phrase.

There are clearly employees whose positions are so sensitive that they need to be excluded, but the Board and/or the courts should decide this question based on some specific statutory language or even specific exclusions within an agency. Definitive standards should be applicable to any conceivable situation.

In the same manner, less generic "catchalls" than the "agency's mission, organization, internal security, assignment of personnel by number, type and grade, and the technology of performing work," as well as all the broad managerial powers defined as outside the scope of negotiation—to direct, hire, promote, transfer, assign, retain, suspend, demote, et cetera—must be established so that unions may have a meaningful voice in the personnel policies and working conditions of Federal employees. The limitation on the use of official time and the adverse action appeal system should be opened to negotiation. The system as presently constituted handcuffs the unions and gives management such control as to negate any collective bargaining principles.

To change this we must establish, by law, collective bargaining rights so that both sides have a true neutral to turn to and a statute to go by. This policy would go hand in glove with some form of union security. So long as we represent all the employees in a unit some form of compensation must go to the union. It is reasonable to require us to represent all employees only so long as we are financially compensated for such representation. There would be obvious problems if we were only to represent members and nonmembers were to receive different benefits.

A modified agency shop provision, where all are not required to join the union but are required to pay for the services they receive, is not in derogation of merit employment principles. It is simply a required expenditure for a necessary service, akin to the compulsory withholding of tax dollars, retirement costs, and health benefits costs. These all provide a benefit for both the employee and the organization making use of the money. The employee receives benefits from the union which are, in fact, commensurate with the benefits he receives from the other organizational elements whose costs are deducted from his paycheck. For \$1.25—in the case of a NAGE member—a week he receives insurance, legal protection, contract negotiation and implementation and, of course, my services—this should be corrected—Jim O'Dea's services which are invaluable. Union security is not strictly a means of promoting unions, but rather a fair method of allowing the unions the financial wherewithal to be on a comparable footing with the executive branch, which seems to view unions as adversaries and spends a great deal of time and money and manpower in that role.

This position and the others we have described are all aimed at establishing a strong, but fair, position for unions in a labor-management program established by law. Clearly, the Federal sector is unique as a setting for labor-management relations. This is not to say that there are not similarities between the public and private sectors; however, in the private sector, management is working to make a profit; labor to get its fair share thereof.

In addition, they produce a product. In the public sector there is a job to be performed and it is the purpose of all parties to get it done. Labor's role is to insure that the employee has a voice in the organiza-

tion so that we can help to maintain and improve it, especially as to its personnel policies and all working conditions that affect the unit employees.

Because we believe there is a distinct difference between the public and the private sector, we strongly opposed the recommendation of the House Select Committee on Committees to abolish the Post Office and Civil Service Committee and merge it into a new labor committee. It is our belief that the labor relations program in the Federal Government has matured to such an extent that it is now time to enact it into law using as a vehicle the bills presently before this subcommittee. Such action will enable a greater majority of the Federal work force to organize and so, hopefully, begin to compare with a large number of the private sector industries which are up to 95 percent unionized—not to disparage Chairman Hampton's claims regarding the percentage of unionization in the Federal Government.

At the same time, the management officials of the various agencies will continue to have the controls granted to them by Congress in its many statutory enactments regulating union activity and prescribing areas of management prerogative in both the public and private sectors. Union management itself is well regulated under title IV of the Labor Management Reporting and Disclosure Act (Landrum-Griffin), and section 18 of Executive Order 11491. This and other legislation covering both sectors will insure uniformity and equality of rights on both sides of the bargaining table.

The three bills before the committee all have a great deal to commend them. It would appear that the subcommittee would like to use H.R. 10700 and its vehicle and we agree, with some input from H.R. 13, H.R. 9784, and these hearings.

In the initial sections dealing with the general intent and scope of the legislation, H.R. 9784 seems to be more in line with our previous statements regarding union security. Therefore, we would suggest that this statement of policy be used in place of those policy sections of H.R. 10700. The last sentence of title I, section 101(2) of H.R. 13 should be appended to section 7101 as subsection (3) of H.R. 10700, to read, "therefore, labor organizations and collective bargaining in the Federal service are in the public interest."

Based on the rationale expressed in that sentence, all agencies should be covered. There should be specific guidelines, such as those in H.R. 10700 regarding supervisors; however, the qualification in H.R. 9784 regarding supervisory personnel should apply throughout. In fact, the definition of "agency" in H.R. 9784 should also be adopted.

Both H.R. 13 and 9784 include guards as well. This is a very reasonable decision and a necessary one. The rationale for excluding guards comes from the private sector where they are an arm of management with a responsibility to protect their employer's premises during strikes and other forms of labor strife.

In the Federal sector, their responsibility is to protect the buildings and the personnel within. There is no rational reason for excluding Federal guards from representation by unions that also represent other Federal employees, thus denying them the expertise of the Federal unions in their own employment problems.

That guards are an appropriate unit, separate because of community of interest, but part of the same national union or an affiliate thereof,

leads to the question of unit determinations. The present system in the Federal Government is overly cautious, time consuming, and expensive. For example, there is no reason for conducting an election between "no union" and a union where the union has a majority of the unit as members with signed dues deduction forms-applications. H.R. 9784 provides for the use of the present private sector method with regard to a "card count."

The method of selecting an exclusive representation by authenticating credible evidence of majority support has been effective in the private sector for years in situations where the petitioning union is unopposed.

The determination of an appropriate unit, however, does not necessarily have to be changed. There is a great deal of case law from the Assistant Secretary of Labor for Labor-Management Relations. The present criteria of "community of interest" and the "promotion of effective dealings and efficiency of agency operations," combined with the broad bargaining authority given in H.R. 9784, seem quite adequate.

The unit question leads naturally into a discussion of the sanctity of union recognition where the union has negotiated an agreement. The sanctity of a contract between parties is a cornerstone of our legal system. The history of labor law in both the private and public sectors is replete with examples of the need for a contract bar to insure effective relations between unions with exclusive recognition and management. The sections of H.R. 13 and 9784 which provide for higher level contracts or recognitions to supersede all lower level agreements are in direct contravention of these principles.

Under such a framework, the choices would eventually be eliminated by the union with the largest bankroll, but not necessarily the best hand. Employees who identified with their fellow workers at their own activity would conceivably be irrevocably bound by a decision made at some higher level. This would be even more unfair where they had engaged in good-faith bargaining and achieved a worthwhile contract which spoke to their particular problems. Such a development, we submit, would not serve the needs and rights of Federal employees.

These needs and rights would, however, be well served by the strong central authority created in all the bills. This authority could and should easily incorporate all the functions of the present adjudicatory policymaking boards established under both statute and Executive order. Of course, we are speaking only of bodies whose functions were part of the labor relations program, not those created for other related reasons—Occupational Safety and Health Administration, Equal Employment Opportunity Commission—but those like the Federal Labor Relations Council and Federal Service Impasse Panel.

As for the Assistant Secretary for Labor-Management Relations, a provision of H.R. 9784 is more applicable to his functions. Looking again to the private sector, the National Labor Relations Board is the only Government agency with a strong, separate General Counsel. H.R. 9784 establishes such an office. (See sec. 4(d).) H.R. 9784 also

provides for greater and more efficacious punitive measures against parties who engage in unlawful acts (sec. II).

The question again arises as to what rights management would have in light of the sanctions imposed on the above. The two theories are that management has those rights specifically granted by law or all those rights not specifically included for labor. The listing of management rights is not necessary and this phrase has sadly been the watchword for agencies' refusal to bargain. Thus, it was omitted by both H.R. 13 and 9784. I would be happy to hear some reasonable guidelines if management had some, but not their all-encompassing catch phrases which they would continue to hide behind, due apparently to some strange fear of the effectiveness of union bargaining teams against the large number of management specialists even with the narrow limits on negotiability under Executive Order 11491.

The need for a broader scope of negotiability is clear. In the Federal sector, unlike the private sector, there is no adversary relationship between union and management. The essence of all these bills is cooperation. Therefore, a union representative should be at almost all policy meetings for consultation purposes to insure input from the employees. This must become true at all levels. The Office of Management and Budget did not ask for union input by mail or phone, much less by consultation, when it revised Circular A-76, which has great impact on Federal job security.

This document and the recent Commission on Government Procurement Policy had little or no union input. Yet, these two groups have established policies in regard to contracting out of work which are having a serious and continuing effect on Government employees. The Procurement Commission asked for some minimal comment from some of the Federal unions. None of us were involved in any consultation with this Commission, yet it has developed policies which greatly affect working conditions.

The question of what is a condition affecting employment, and at what level negotiations will occur, is one which must be addressed more strongly than in H.R. 10700. In the blend of the three, the stronger provisions from H.R. 13 and H.R. 9784 are necessary to convince Federal management that they are not working in the private sector and cooperating with the unions is in everyone's best interest.

In conjunction with this, unfair labor practices should receive the strong penalties proposed for unlawful acts in H.R. 9784 because they are potentially more damaging in the Federal sector than in the private sector. All aspects of the bargaining process should be more open. Impasse procedures should be specifically laid out and generally faster. And final review of appeals in all of these areas should be within the purview of the Federal labor relations authority.

The time has come for this legislation. Over 30 States have enacted legislation ranging from the right to confer to the right to strike. This has all taken effect in the last decade, since the inception of Executive Order 10988 in 1962.

The Federal sector has gone through a long enough incubation period. A labor relations law for nonpostal unions in the Federal Government must be enacted to provide the same rights to Federal employees that are enjoyed by millions of other Americans, both in the private and public areas of employment.

The law must be one that enunciates the importance of labor relations and collective bargaining and provides for a strong Federal labor relations authority with broad powers over a broader spectrum of negotiable areas.

H.R. 10700 is a good bill but it is not strong enough. It relies on the present Executive order and limited National Labor Relations Act provisions for precedent more than do H.R. 13 and H.R. 9784. We are not in full agreement with those bills in that their denial of contract bar and their denial of any need for some definition of management rights is not appropriate for Federal public employment. What management rights should be is a good question—the best answer is limited. So long as management and employees are working toward the same goals and objectives, management's rights should center around the collective bargaining agreement.

All in all, the stronger rights granted to unions and to employees in H.R. 13 and H.R. 9784 are necessary to insure equality in the Federal sector for all as to the conditions affecting employment.

Therefore, we recommend that H.R. 10700, with the addition of a majority of the substantive and procedural elements of H.R. 13 and H.R. 9784 as discussed herein, be adopted by this subcommittee as soon as possible.

Thank you for your courtesy and attention.

Mr. HENDERSON. Thank you very much, Mr. Lyons. I think you have a very excellent statement. Your views certainly will be carefully considered.

Before I get into some of the technical questions, I'm delighted to yield to Mr. Moakley.

Mr. MOAKLEY. I will yield back to you since you're the expert in this field. I'll be glad to listen. I think the statement is a great statement and I think that the problem that this committee has under the Bolling report, that this committee may no longer function, and I'm glad you're in favor of retaining this committee to deal with the problems of the Federal civil service.

Mr. HENDERSON. Mr. LYONS, I think the most significant point that you make is the one that I have arrived at, and that's the need for the legislation. I think we could have much greater success in the kind of legislation we enacted if everyone recognize the need, but I'm most appreciative of the points that you have made with regards to not only both the need but getting possible clarification, and from time to time as we work on the legislation I feel sure we will be calling on you and your people to give us your further advice with regards to some of the specifics.

On page 5 of your statement in discussing coverage of the proposed legislation, you say that "there are clearly employees whose positions are so sensitive that they need to be excluded. Definitive standards should be applicable to any conceivable situation."

What standards would you suggest be incorporated either in the bill or established by the Federal Labor Relations Authority to assist in determining these exclusions? We have found great difficulty in the definitive standards and if you would like to touch on it or if you'd like to submit your views to us later, in either event, they could be most helpful to us.

Mr. O'DEA. We believe that although there are Federal agencies that are involved in national security, they have employees who could

clearly be involved in union relations and should have some voice in collective bargaining. However, the people involved in the most sensitive file areas and the agents themselves we feel would be excluded. That, of course, would cover the foreign agents of the CIA, the field agents of the FBI, and possibly those Secret Service agents involved in Presidential production.

Mr. HENDERSON. Do you think this could be resolved by a request of the employees or their proposed organizations to the Authority for specific recognition of the unit rather than to continue the full exclusion of the agency?

Mr. O'DEA. Clearly, I don't think the agency should be the party making this decision. I think the Authority must make the decision because the agency is involved in its own management. We don't believe the agency head should have the unchallenged right to unilaterally determine who should be exempt.

Mr. LYONS. Let me give you an example of this. We had a unit we petitioned for in Virginia of National Guard technicians. There was some question as to the people that we had petitioned for as related to some of their duties, in that from time to time they used guard dogs and did guard duty, once or twice a month. That the agency felt they should be excluded from the unit. Their jobs were allegedly sensitive and they were considered as security guards.

By the time they got through with the unit, I think we lost 60 percent of the people we had petitioned for and I thought that the decision that was rendered was rather ridiculous, that they were in a sensitive position. Certainly, for the once or twice a month that they walked around with an attack dog, I don't believe they should have been placed outside of the unit.

But these are some of the things that we are faced with and many times there are different decisions involving the same grades and types of personnel throughout the country. I remember one time when the head of the FAA thought that every person who worked for the FAA was in a sensitive position, even including the janitors who worked in their building, but he was overruled, fortunately.

Mr. HENDERSON. Also on page 5, you advocate some form of union security. Yesterday in their testimony, the National Federation of Federal Employees proposed a fair representation fee which would serve that purpose but contingent upon an election by employees in the unit represented to determine whether they supported the fee.

What would be your views on this alternative?

Mr. LYONS. Certainly I would go along with the—well, right now, for instance, some of the States have an agency fee proviso, and the way our organization handles it, we allow the unit or the local to make that determination as to whether or not the nonmembers will pay an agency fee, and if they vote in favor we notify the town, the city or the State that we request participation in the agency fee program. And I have found in every case where we have requested the membership to vote as to whether or not they want the nonunion members to participate in an agency fee, that it was a favorable reaction.

I feel, as we pointed out, that here we are forced to represent both the members and nonmembers and we have to have quite a staff to represent these people. Then the nonmembers, who certainly request representation from time to time, should also participate by paying at

least an agency fee. But I would not certainly object to the NEFE proposal and I think it's a fair proposal.

Mr. HENDERSON. I'm very glad to have your response because I think we're getting very close with that kind of a proposal, also coupled with some of the positions that I think the Education and Labor Committee and the House of Representatives took recently in the extension of the NLRA to private hospitals, as that legislation permitted employees with very strong religious convictions to be excluded, and what we possibly could do in this type of voting situation is to insure that no one is forced to belong, to join or to pay a fee to work for the Government, and that's been the very strong position of some of us who have felt that that should not be the case.

Mr. LYONS. Could I just respond, Mr. Chairman, with a story I heard from Congressman Moakley. A fellow appeared before a judge also, and talked about the religious aspect, but I know that quite a few of those with very strong religious beliefs come to us and ask that we represent them any time that they get in trouble, and they, because of their religious beliefs, may not belong to the union, but they certainly like to have our attorneys.

It was like the story of the fellow—I hope I'm saying it right, Congressman Moakley—who went before the judge and the judge said, "Who's your attorney?" And he said, "The Lord is my representative." The judge said, "Yes, I know that, but who is it locally?"

So our union locally will take care of them. I hope I didn't kill that one.

Mr. MOAKLEY. I was going to say you make a better presentation than you tell a story.

Mr. HENDERSON. You propose that qualifications in H.R. 9784 regarding supervisor personnel should apply throughout. This is on page 8 of your statement. That bill would permit supervisors of fire-fighters or educational employees or public safety officers to be in the same unit of recognition as the people they supervise.

What would be your position on that proposal and why should these supervisors be treated separately from all other supervisors?

Mr. O'DRA. I don't feel that bill provides that all supervisors would be a part of the units in those three areas. It provides that a majority of the supervisory criteria must be fulfilled before an employee is considered a supervisor and thus excluded under the firefighting, educational and public safety areas. In the firefighting area, I think this has been a distinct problem because they have created ranks to provide a broader pay structure that don't entail true supervisory capabilities. The same thing is true of first level supervisors in public education.

I feel that hiring and firing, direct control over promotion, and so forth, are valid criteria, demotion and reassignment; but the first level supervisors in those three areas, for the most part, make recommendations that are only advisory.

In the firefighting area—and we do have a number of firefighting units in the Federal sector and the State and county areas—most of those units include up to captains and in a majority of our police units we include up to sergeants, who would conceivably be considered supervisory personnel under the criteria of "hiring or firing or promoting or demoting or assigning." If you require the definition of



supervisors as H.R. 9784 does, that a majority of these, or a number of these, criteria must be met before a person is regarded as a supervisor and therefore excluded, then I think you will end up with a fairer unit.

First level supervisors in those three areas are work leaders. But under existing criteria, they have been excluded and therefore they are denied representation. Management uses them, I feel, as whipping boys and they identify most closely, at least in the educational and public safety areas, with the rank and file.

Mr. HENDERSON. Thank you very much, Mr. Lyons. The staff has more questions they have prepared that we would like to work with you on in getting entered into the record at this point without taking more time.

Let me commend all of you for the obvious amount of attention you have given to this legislation and I assure you that your presentation this morning has been most helpful to us.

Mr. LYONS. Thank you.

[The letter which follows was received in response to additional questions:]

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES,  
Washington, D.C., June 27, 1974.

Mr. ROY D. MESKER,  
Staff Director, Subcommittee on Manpower and Civil Service, Committee on  
Post Office and Civil Service, U.S. House of Representatives, Washington,  
D.C.

DEAR MR. MESKER: This is in response to your letter of June 20, 1974, to Mr. Lyons setting forth some additional questions in connection with the Subcommittee hearings on June 13.

I will address your questions in the order they were posed.

1. It is our belief that the government's labor-management relations program should make provision for the recognition of locals consisting of supervisory employees; further, that there should be no prohibition against representation by and recognition of supervisory units by organizations that also represent non-supervisory employees. We concede that, to permit recognition of units that encompass both supervisory and non-supervisory employees, would pose conflict-of-interest problems. However, so long as both categories of workers are confined to units of their peers, we see no problem or potential conflict. Supervisory locals granted recognition under the same procedures as apply presently to locals of non-supervisory employees would elect officers from their own ranks, and should be entitled to negotiate agreements covering their working conditions and personnel policies.

2. Current policy under Executive Order 11491 permissively allows union and management negotiating teams to "request" an exception to an agency policy or regulation if both parties agree to a procedure that departs from such policy or regulation. It is our experience that this provision is meaningless and empty of any real substance. For example, both in 1972 and 1974 the N.A.G.E. has sought an exception to a Department of Commerce policy to allow negotiation in a nation-wide agreement with the National Weather Service of language permitting the union to designate a non-participating observer on promotion panels. Not only has the request been denied by the Department, but the agency negotiating team has been directed by the Department to not join with the union in a request for an exception to the policy. Even if the N.W.S. were to demonstrate a measure of courage and join with us in such a request, the Department has made it clear that it would deny it.

The N.A.G.E. contends that, particularly where nation-wide agreements are involved, all agency regulations and policies should be negotiable, except insofar as they are required by statute. Similarly, there presently exists no procedure or process by which unions can have impact or effect on the substance of the Federal Personnel Manual. We suggest the development of a framework by which the major organizations representing Federal workers designate members

of a multi-union negotiating team, which would be authorized to negotiate the provisions of the F.P.M. with the Civil Service Commission to the extent that its provisions are not dictated by law. In like fashion, the same multi-union negotiating team should be empowered to negotiate with the Office of Management and Budget on matters directly affecting the Federal workforce, i.e., policies governing contracting-out procedures, programs to control average grade, etc.

3. The N.A.G.E. supports the concept of compulsory and binding arbitration in the resolution of bargaining impasses, in lieu of the right to strike. However, such a mechanism must be coupled with a significant broadening of the scope of negotiability. Binding arbitration over minutiae is neither satisfying nor significant. We would be willing to test the procedure of "last best offer" arbitration, in which the arbitrator selects between the last positions or offers made by the union and management bargaining teams. This technique is now in use in the States of Michigan, Wisconsin, and Iowa.

4. With regard to our testimony on national recognition and national bargaining units, our position is that the two basic concerns must be protected: (1) that viable bargaining relationships enjoyed by unions at the local or regional levels should not be over-ridden by an effort of another union which, through sheer numbers, seeks to "lock-up" an entire agency in a single bargaining unit, and (2) That some agencies lend themselves to national units, while others do not. In short, we are arguing against the adoption of unit criteria which would permit the establishment of larger bargaining units which would cancel out or supersede existing units and/or existing contracts held by organizations other than the one seeking a nation-wide unit.

I trust that these comments are responsive to your questions.

Sincerely,

ALAN J. WHITNEY,  
*Executive Vice President.*

Mr. HENDERSON. Our next witness this morning is Mr. John Leyden, who is president of the Professional Air Traffic Controllers Organization. Mr. Leyden, it's my pleasure to welcome you before the subcommittee here this morning and I understand you have the general counsel and the legislative research director with you. You may introduce them and proceed with your statement.

**STATEMENT OF JOHN F. LEYDEN, PRESIDENT, PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, ACCOMPANIED BY WILLIAM B. PEER, GENERAL COUNSEL; ALLAN MOSKOWITZ, LEGISLATIVE RESEARCH DIRECTOR; AND JOHN MAHER, DIRECTOR OF LABOR-MANAGEMENT RELATIONS**

Mr. LEYDEN. Thank you, Mr. Chairman.

I have one other gentleman who is with us this morning I'd like to introduce also. On my left is Mr. John Maher, our director of labor-management relations. On his left is Mr. Allan Moskowitz, legislative research director; and on my right is our general counsel, Mr. William Peer.

Mr. HENDERSON. It's my pleasure to welcome you gentlemen this morning.

Mr. LEYDEN. Mr. Chairman and members of the subcommittee, the Professional Air Traffic Controllers Organization greatly appreciates the opportunity you have given us today to present our views on legislation to place the Federal labor-management relations program on a statutory basis, a change that we strongly feel is long overdue.

Of the three main bills before the committee—H.R. 10700, introduced by Subcommittee Chairman Henderson for himself and for Committee Chairman Dulski; H.R. 9784, introduced by Congressman William D. Ford; and H.R. 13, introduced by Congressman Frank

Brasco, only the last, H.R. 13, presents a system of Federal labor-management relations that PATCO can support. We do have reservations about H.R. 13's omission of a clause supporting the right to strike, which we feel is a very important right, one that labor must have if it is to deal with management as a true equal rather than as an enfeebled inferior, as we exist at present. I will return to the bills more specifically later in my presentation.

At present, I would like to direct my comments toward the purpose of these hearings. It is a purpose that all but one of the organizations and individuals who have testified before you agree upon, namely to free Federal labor-management relations from its imprisonment by the Executive order system and place it on a firm statutory foundation where labor will at least be able to present its views from the same position as management has had for years. From a merely cursory glance at the numerous bills introduced on this subject, we must conclude that many Members of Congress, and especially this subcommittee, are agreeable to this dire need for change. All, but one, would agree with us. That one is Mr. Hampton.

Both Mr. Hampton, the Chairman of the Civil Service Commission, and Mr. Hampton, the Chairman of the Federal Labor Relations Council, sat before this subcommittee and characterized the "Executive order experience" as a "success," as "satisfactory" and complacently concluded that "there has been no demonstrated need for legislation." Can Mr. Hampton, high atop the vast Federal bureaucracy, controlling the lives of over 1 million Federal workers, sincerely desire change? I think not. Though we recognize that the doctrine of divine right has been out of fashion these past few centuries, we also recognize the fact that an impervious autocrat will not voluntarily relinquish his authority merely because he is asked politely to do so.

When Mr. Hampton testified that there is a stable labor-management relations program in the Federal Government, he misinformed the subcommittee. The present system is stable only in the sense that labor is almost literally bound and gagged in the pursuit of its rights at the negotiating table, in the appeals processes, and in the principal forums open to us.

Last week, Mr. Webber of the American Federation of Government Employees, testified as to the lack of the alleged "bilateralisms" in the present Executive order. Any one possessing the least amount of knowledge concerning the present system and an unbiased viewpoint would be forced to agree to this point. But this is exactly what is missing from Mr. Hampton's testimony, an unbiased viewpoint. This lack of objectivity permeates the entire program beginning with the settlement of the smallest grievance, where binding arbitration is a fantasy because the arbitrator's decision is, as a matter of course, appealed to the management-dominated Council, to the Executive order review process, where the very same Council, composed solely of management representatives, consider themselves able to objectively review the abuses they have steadfastly refused to consider in the past.

For the record, Mr. Chairman, our esteemed colleague, Mr. Meicklejohn, legislative representative of the AFL-CIO, asserted last week in his testimony that the AFL-CIO and all its affiliates participated in this latest so-called review. This is not entirely correct. PATCO and

one other AFL-CIO affiliate formally boycotted this general review because we realized in advance that Mr. Meicklejohn and those that did participate discovered in the process of those proceedings, namely that it would be an exercise in futility, a charade. From the drift of Mr. Meicklejohn's remarks concerning that review, it would seem that our prognosis was justified and that he too is sadder but wiser.

I would also like to point out that it was no coincidence that the announcement of the recent review came at a point when Congress was beginning serious efforts to correct the injustices in the present Executive order or that the Council began to release decisions in cases that had been backed up for years just at the time when management's treatment of labor was about to be exposed.

How much progress has there been? Mr. Hampton, in his remarks, stressed the progress which has been made under the Executive orders since President Kennedy issued Executive Order 10988 in 1962. We will agree that labor's relationship with management has improved a great deal since then in many ways, but in some ways only the form of our relationship has changed, not the substance. A little retrospection may be of assistance in illustrating this point. In February of 1970, after a good deal of frustration over the issue of involuntary transfers, the Secretary of Transportation, John A. Volpe, agreed to a meeting between representatives of the Federal Aviation Administration, the Department of Transportation and PATCO, together with a mediator from the Federal Mediation and Conciliation Service. After he considered various alternatives, the mediator made three specific recommendations, any one of which would have defused the situation and resolved the dispute. These recommendations were forwarded to the Secretary of Transportation for his approval and were totally rejected.

His total disregard of the mediator's recommendations not only inflamed the situation but actually precipitated the controllers' "sick-out" the following month. This unnecessary, mutually disastrous affair could have been averted if the Federal Mediation and Conciliation Service had the authority to firmly bind the parties at the table. PATCO is firmly convinced that absent Department of Transportation intervention, the Federal Aviation Administration, who had a clearer understanding of the situation, might have responded in a manner that would have precluded the unfortunate aftermath.

Has this situation improved or changed at all? Let's examine the controllers' and PATCO's experience in seeking to change the system by which controllers are classified in their job and which also determines their salaries. Beginning in 1969, controllers throughout the country began petitioning the FAA and the Civil Service Commission to change the classification system, under which they are paid, and which assigns primary and controlling weight to the volume of traffic handled by the facility in which the controller works. The controller's job itself, his duties, the complexities of his responsibilities, and his own job performance is submerged under this predominate criteria of volume of traffic.

In January 1970 when relations between controllers and the FAA were deteriorating at an accelerating rate daily, PATCO itself asked the FAA to abolish this "ill-conceived and discriminating formula." Later that month the agency replied that it would make every effort to "determine ways in which the standard can be revised \* \* \*." The

agency also said that when a "better system" can be developed, it would either change the agency's own guidelines or ask the CSC to revise the standards.

In a word, after this, nothing happened, and PATCO was compelled to file suit against the FAA and the Civil Service Commission. The suit is still pending in Federal court, with the FAA and the Civil Service Commission attorneys using every legal device to get the Federal judge out of the case. However, just last week, the judge indicated that he will not remove himself from the case because to do so would remove the one compelling reason for the agencies to deal with us, namely, the threat of an injunction.

During the 1973 negotiations, PATCO and the FAA agreed to establish a classification review committee as a bilateral committee to study the present system with the goal in mind of making whatever revisions were deemed necessary. However, because of the several bureaucratic layers through which any classification change has to go, the work of the committee may turn out to be to no avail. The committee's report which is expected later this year, will be submitted to the Administrator of FAA. The Administrator in turn must submit his recommendations to the Secretary of Transportation. The Secretary of Transportation then must submit his recommendations to the Civil Service Commission. The Civil Service Commission may then do with the recommendation whatever they wish, which may include starting a study of its own, outright refusal, outright approval, or some modification. Whatever the result, it will be years in coming and these will be years precious to the controllers who are working today under an unfair and, we believe, illegal classification system which denies them what Congress says they are entitled to: Equal pay for equal work.

Last December PATCO, in order to bring this issue to a more rapid conclusion, requested a meeting of responsible Civil Service Commission officials. At that meeting PATCO requested that the Civil Service Commission join with FAA and PATCO now in the study going on so that time could be saved to all concerned. PATCO also requested an early decision from the Civil Service Commission on whether the FAA had improperly refused to upgrade and promote certain controllers who were entitled to it. In a second meeting in January, the CSC assured us that PATCO would be supplied with a letter on the matters at an early date. Not until last week did PATCO find out what the Civil Service Commission intended to do and was doing, and the information PATCO obtained was obtained from a third-party source and not from the Civil Service Commission.

At the meeting in January, the Civil Service Commission informed PATCO that it had invited the DOT to participate in the meeting so that all interests in the classification matter could be represented. PATCO believed that this was a useful and worthwhile invitation. The Department of Transportation refused to attend the meeting on the grounds that it does not recognize PATCO and that PATCO has no status with DOT. The result of all of this is that on the classification issue, the FAA has little or no authority to deal with PATCO because of its subordinate role.

The Civil Service Commission says that it is blocked from playing a more effective role because it can deal only with the Department of

Transportation and not with PATCO or FAA. The Department of Transportation refuses to deal with PATCO because it says that PATCO's recognition and status is for and with FAA. PATCO is left chasing its proverbial tail in a never-ending circle, with no one agency either willing or prepared to deal with us. Is this the same Executive order system which Mr. Hampton points to with pride for "its effectiveness, and its responsiveness to the interests and needs of all parties concerned?"

His own Civil Service Commission is one of the primary reasons why the system is not working; his own agency is expert in the use of delay and dilatory tactics; his own agency continues to assert the proposition that the employees and their unions have no role to play and what will come for the benefit of the employees will be at the largess of Mr. Hampton and his servants who claim to know what is better for the employees than the employees themselves or their organizations. This paternalism must end.

In a true collective bargaining relationship, the parties bargaining are the same parties who have the authority to make the final decision on the outcome of that bargaining. What is the point of spending weeks, months, even years, exhausting time, patience, and financial and physical resources to negotiate a workable agreement if that agreement is subject to the whim of a higher agency authority who took no part in the slow, arduous development of that agreement and who cannot possibly perceive the efforts involved or the understandings reached.

It is clear that the confusion and ineffectiveness in the present Federal labor-management relationship under the Executive orders is expensive, time consuming, and aggravating for all concerned. We hope that, in the process of legislation, the important problem of identifying the real employer will be solved.

Management rights are an obstacle to professional input to the system. This is another point of contention between Federal employees and management. While I agree that there do exist certain areas of the employee-management relationship that belong exclusively to management, the agencies have for too long managed to hide behind their all-inclusive shield of management rights even concerning technical matters where the expertise and experience of the men employed in these fields should be welcomed and not disregarded.

When labor organizations, such as PATCO, are told by their employer that the employer does not have to deal with the labor organization on matters which the employees and the union know affect them substantially, additional frustrations and undercurrents of dissent are created. For PATCO, which has pressed hard in many new areas for recognition, the situation is becoming rapidly acute. This should be of particular concern to the Congress because the matters which we wish to address ourselves to in dealing with the agency affect the lives and safety of millions of air travelers each year. PATCO has, throughout the years, sought in vain, recognition by FAA of its proper role in what the FAA calls technology and operating matters.

PATCO sees these matters in quite a different light. The aviation industry is, like many other industries, undergoing a rapid change in technology and approaches to aviation transportation and safety.

Who, more than the controllers who work the equipment and their representative, is better situated to give input on how that equipment and how the new systems affect air traffic control, transportation safety, and the employees. Yet, the agency refuses to deal with PATCO, refuses even to recognize PATCO as having an important role to play and shuts the door in our face.

One example of this is the introduction of a new "microwave landing system." The system is presently undergoing a study in the early stages of its development. Every other aviation interest, the airlines, the pilots, FAA, and other users, have been assigned a role to play in studying this system, its uses, its faults, its capabilities, and its inadequacies. PATCO and the controllers who will be using the microwave landing system have not been assigned any such role.

PATCO challenged this decision by FAA through its contract procedures and the agency refused to participate in any grievance or arbitration procedure involving it. PATCO then sought relief under the Executive order by appealing to the Assistant Secretary of Labor for Labor-Management Relations and PATCO was turned down cold in a decision which said that the Executive order does not compel an agency to deal with an employee organization in such matters.

This is sheer nonsense, and ignores the practical day-to-day realities of the controller and his job and also the productive role that PATCO, or any other employee organization, can play in the advancement of technology and in the improvement of the system.

While our efforts to this end have been constantly impeded by management, I assure you that these same efforts will not cease.

H.R. 13 and H.R. 9784 alleviate this problem by effectively narrowing management rights.

What can labor do about it? This is possibly the most frustrating and infuriating dilemma that labor faces in the present Executive order. There is nothing in the institution of Federal employee-management relations today that forces management to act.

In the present collective-bargaining arrangement, labor is under a great pressure, first from its membership, to conclude negotiations on the entire range of issues affecting them, and second, from the financial pressures which control the very survival of the organization, specifically to obtain dues checkoff. Management has no such pressures at all. They can allow months to go by deadlocked over ground-rules such as the supposedly unimportant issue of official time, while in reality they are diluting the strength and security of the labor organization.

Mr. Hampton realizes this fact and points out in his statement that bargaining is prolonged in the great majority of cases where a dues checkoff agreement exists. The correct interpretation of this fact is that once the financial security of the union is secured, some of the pressure is off the organization and they are then able to effectively bargain for a more equitable contract.

How many of the more than 2,500 agreements that Mr. Hampton cites as being negotiated under Executive Order 11491 are really satisfactory to the unions who negotiated them? How many unions were forced to sign contracts because they could no longer afford the time, money, or manpower to sit and wait while management, who loses nothing and can only gain by the passage of time, merely delays and

retards the negotiations by their obstinacy. Mr. William Usery, Director of the Federal Mediation and Conciliation Service, in his recent testimony before a congressional appropriations subcommittee, is also aware of the problem. He cited, as one of the principal reasons for his request for more positions in his organization, the lack of bona fide deadlines for settlement which accompanies pressures such as the strike and lockout in the private sector. This often causes Federal bargaining to extend for months, even years beyond the expiration date of the prior agreement.

Our own bargaining predicament is indicative of the "Executive order experience." PATCO is presently at impasse with the FAA on 67 of 73 articles under negotiation for the new agreement. Our first contract, negotiated last year, had an expiration date of April 1974. We began negotiations for a new contract in February 1974. After several weeks of negotiations, the parties reached tentative agreement on five or six minor items. The big issues are among the 67 which remain at issue.

We are without any effective way of dealing with these impasse items, except to offer to FAA one compromising concession after another in this process which many call "collective begging." Agreement is difficult, if not impossible, to reach when the party on the other side of the table, FAA, can always duck behind its parent agency, the Department of Transportation to negotiate on the particular item at issue. During our last negotiations, management officials from the Department of Transportation second-guessed the bargain reached by PATCO and FAA to the point where the agreement almost became unhinged. And this was at a time when PATCO had the signature of FAA officials on the agreement and PATCO had informed its members that an agreement had been concluded. We foresee the same prospect this year, with the same Department of Transportation officials looking over the shoulder of FAA and dictating both bargaining strategy on a day-to-day basis for FAA and the terms of the final agreement.

There is also the matter of the Department of Transportation regulations and rules which FAA is adroit at pulling out of their briefcases and throwing onto the table as their answer to why a PATCO proposal is either unacceptable or illegal. We have tried to force the Department of Transportation to the bargaining table, without success. Mr. Hampton's agency, the Federal Labor Relations Council, was importuned by PATCO to determine whether these DOT practices were proper. The Council declined even to accept PATCO's petition, leaving the parties for the 1974 negotiations in exactly the same place they were in during the 1973 negotiations.

The patience of the controllers in the field is wearing thin, with the slow pace of negotiations and with there being apparently no way out of the present impasse situation. PATCO has, during the last several years conducted its business in a responsible and high-esteemed fashion. However, there is only so much that an organization may do to keep the lid on frustration in the field of some of the employees involved. Any system of relations between labor and management which does not provide for an effective means of dealing with the frustrations of the employees at the bargaining table is doomed to failure. We feel that the wider scope of bargaining and the more complete final



and binding arbitration afforded by H.R. 13 and H.R. 9784 will mitigate this crucial problem.

Who is the court of last resort? It would be reasonable to assume that since the Executive order denies labor the power to pressure management into a more reasonable and responsible position, a means would be provided within the system for a strong, neutral third party who could and would furnish assistance in this regard. But you will search the present Federal labor-management program in vain for such an institution. What has been PATCO's experience with final and binding arbitration under the Executive order? In its dealings with FAA during the last year, PATCO has participated in five arbitration cases against the agency. Of those five, PATCO has been successful in three and unsuccessful in the other two.

Of the three where PATCO was the winner, FAA has exercised its right under the Executive order to file an appeal against the award in two of those cases. In other words, FAA, having lost three cases, has appealed 67 percent of its losses. The fruits of PATCO's victory for the controllers in those cases are still being denied the controllers. Mr. Hampton's Federal Labor Relations Council has granted the Agency's appeal in one of those cases, in a case in which the Agency is flagrantly violating the language of its agreement with PATCO on overtime hours. The Agency has claimed that the Comptroller General has rendered a decision at some time or some where which makes the PATCO-FAA agreement illegal and which makes the arbitrator's award unenforceable. Here are the cards that an agency plays with on such important matters as overtime.

The Agency does not have to negotiate with PATCO on such matters; the Agency does not have to enter into an agreement with PATCO on such matters; once having entered into the agreement, the Agency may violate the agreement with impunity; the Agency does not have to participate in the grievance or arbitration proceeding if it doesn't want to, and may decide to challenge the grievability of the issue; when an arbitration award goes against the Agency, it does not have to comply with the award; when an appeal is taken to the Federal Labor Relations Council the Agency may dredge up some obscure Comptroller General's decision and claim that that decision supersedes all others. Binding arbitration? It seems more akin to unbinding arbitration.

Each separate appeals system leads, in the end result, to the Federal Labor Relations Council, or to the civil service, to administrators such as Mr. Hampton, whose partiality is hardly in question. Their position necessarily supports the management position. When the men who have the authority are the very same men who hear your complaint, decide the issue, decide your appeal, and then review the system under which you have already complained and appealed, impartiality becomes a farce and justice a myth.

Moreover, the Council, labor's own supreme court, is so unaccountable that the mechanisms of its internal operations are unknown. Does the staff decide the issues or do the three members themselves actually deliberate on the case, decide the rules of law, and issue the decisions? No one outside the Council knows, and this in itself contributes to an undemocratic, unaccountable, and unacceptable system.

The only impartial agency within this rotting, stagnant structure is the Federal Services Impasse Panel. Their decision is final and binding. Yet they have only had 105 cases in the past 4 years. Surely the need for their services must be greater than this low number implies. The reason for the lack of activity, I propose, is that the Panel, rather than hearing an impasse containing many disputed articles, will instead send the parties back to the negotiating table. Again, time works only on the side of management, for they may agree to nothing and so prevent real and expeditious bargaining that would result in an agreement. It is also significant to note that except for five joint requests, all the other 100 actions had been initiated by labor organizations. Thus, even Mr. Hampton's statistics cry out for neutral intervention.

Again, the scheme of truly impartial, final, and binding arbitration offered by legislation before the subcommittee should do away with these constant abuses.

I would now like to turn my full attention toward the bills presently before this subcommittee. PATCO supports H.R. 13. The Professional Air Traffic Controllers Organization believes that any legislated plan of Federal labor-management relations must, at least, deal with the problems of management rights, must create a system of impartial, binding arbitration, and must grant labor a means by which it can propel management from its intractable and unyielding complacency, if that plan is to be both equitable and workable. Among the three major bills before this subcommittee, we feel that H.R. 13, introduced by Congressman Brasco, will best alleviate the present inequities in the Executive order and produce a viable, strong, and intelligent bargaining system.

Our sole dissatisfaction with H.R. 13 is that it omits a clause supporting the right to strike. The right of a citizen to withhold his services is the best protection for meaningful, productive collective bargaining. That right should not be denied a citizen simply because he is a Federal employee. If Congress finds that a total right to strike cannot be achieved in the proposed legislation, that PATCO would support the limited right to strike as embodied in H.R. 9784, introduced by Congressman William D. Ford.

If Congress decides, in the enactment of this legislation, that the right to strike, no matter how limited, is not compatible with the concept of a Federal employee-management relationship, PATCO believes that the sole suitable alternative for this right is a pervasive system of impartial, binding, and final arbitration for the resolution of issues that come to an impasse in the course of negotiations or bargaining. The system that would have our endorsement would have to include a method by which grievances and questions concerning the application or interpretation of an agreement are settled by a neutral party who has the ability to make a final decision by which the parties are bound. In H.R. 16700, the decisions of the arbitrator concerning grievances are appealable to the authority. While we hope the members of that agency will be evenhanded in their deliberations, we would rather not be forced to depend on it. For these reasons, we support the method proposed in H.R. 13.

All three bills provide for a strong, central, neutral authority which is assigned the duty of the administration of the substantive portions of the act, and we are gratified that this need has been so widely

recognized by the sponsors of these bills. However, we would suggest that any final bill contain a guarantee that labor is equally represented with management on the membership of that authority. H.R. 10700 provides an additional agency, the Federal Labor Relations Board, a bipartisan mechanism to consider policies and regulations, or amendments to existing policies or regulations, involving matters subject to negotiation relative to personnel policies and practices and matters affecting working conditions which the Civil Service Commission or any other agency, excepting the Department of Defense, proposes to issue. We strongly support the concept but believe that the mechanics of the selection of the Board's members be made more impartial by granting the power of appointment to some individual other than the Chairman of the Civil Service Commission.

H.R. 10700 is a definite improvement over the Executive order in many areas. It provides for dues checkoff at no cost to the union, thus insuring the security of the labor organization even while negotiating a new agreement. We are pleased to see that it abolishes the time-consuming mandatory election as the sole method of choosing the exclusive representative and additionally provides for certification of that status if the organization represents a majority of employees in that unit and there is no other opposition. But H.R. 10700 contains very little to separate it from Executive Order 11491, as amended, in the area of management rights.

H.R. 10700 protects that wide and ambiguous delineation of management rights that Federal employees have been forced to labor under in the past. The scope of bargaining would remain rather restricted, while questions of negotiability would be decided by the agency head, subject to appeal to the Federal Labor Relations authority. For this reason, we prefer H.R. 13 and H.R. 9784 which contain no such limitations, producing a truer collective bargaining system which we feel is the most productive goal.

H.R. 10700 does not require employees to pay their fair share to the union for the obligation of the union to defend and represent them in contract negotiations, grievances, or appeals. It thus expressly prohibits the agency shop. While H.R. 10700 tries to ameliorate this union hardship by decreasing our obligation to represent all employees in negotiations and grievances, it is our considered opinion that recent Supreme Court decisions clearly require the union to represent all employees in the unit and that it would be illegal to determine our obligation on the basis of union membership. Because H.R. 13 and H.R. 9784 provide this measure of union security and this idea of equal support for equal representation, we endorse these bills.

Another important factor that has been hindering our effectiveness in resolving differences with management is that of official time. We are not financially equipped to wade through the laborious and time-consuming negotiations that we must pursue in the defense of our rights while management's representatives are totally recompensed for their participation in these same matters.

H.R. 10700 recognizes this problem by providing for mandatory official time for representatives of an "exclusively recognized or certified labor organization in the negotiation of an agreement, \* \* \* including attendance at impasse settlement proceedings \* \* \* during regular hours." If the use of official time is requested for any other

representational function, such as grievances, the determination is at the discretion of the Authority. Clearly, the fact that the union representative must relinquish his financial security for any representational function while the management representative does not is unfair and the distinction between the use of that time for negotiations of agreements and the use of that time for grievances is, at best, illusory.

Moreover, H.R. 10700 creates the Federal Labor Relations Board, proposed bilateral representation on that Board, but at the same time undercuts the effectiveness of labor's part in that tribunal by way of forbidding the award of official time to those members who represent labor organizations. This partial solution of the problem is unsatisfactory.

In contrast, H.R. 13 mandates full official time for employees called upon by either party to participate in any phase of the proceedings under the bill, "including elections, investigations, hearings, negotiations, including groundrules, and grievance and impasse proceedings \* \* \*." We feel this approach to be the best one; the only approach which can strengthen Federal labor-management relations.

In conclusion, Mr. Chairman, we again wish to thank you for enabling us to speak to these issues and to these bills. We would be pleased to offer any assistance to the committee in the way of counsel or information concerning the proposed legislation, for we believe that both the committee and the Professional Air Traffic Controllers Organization are working for the same goal, a legislated change to provide a workable system, one insuring equal rights and responsibilities for both sides of the bargaining table and assuring a common respect for the presently abused Federal employee-management relationship.

Mr. HENDERSON. Thank you very much.

On page 18, with regards to official time, you state H.R. 10700 creates the Federal Labor Relations Board and does not provide for the award of official time.

Isn't it true that as envisioned under that bill the union officials who would be before that Board are not employees of the Government?

Mr. LEYDEN. No, sir. I believe that, as in our particular case and I can speak only to that, all of our employees who represent us at the bargaining table are in fact full-time employees of the agency who for that period of time are assigned the project of working for the negotiating process.

Mr. HENDERSON. That may be the explanation as to why the question hasn't been raised by the other witnesses. We certainly could recognize that you may have a peculiar situation and it could be that we would find your position worthy of amending the bill to provide that if they are employees they may be awarded the official time.

Mr. LEYDEN. If I understand the gist of the question, I would support your position that if general counsel were at the bargaining table with us we, in fact, would pay that particular portion, yes.

Mr. HENDERSON. Mr. Hampton testified that only 16 percent of bargaining situations require third-party involvement, most of them involving only mediations. With all other third-party involvement, such as the Federal Labor Relations Council, the Federal Services Impasse Panel, the Assistant Secretary of Labor, 80 bargaining situations.

How would you respond to this defense of the Executive order system?

Mr. LEYDEN. I would cite as a specific example the futility that I did in my testimony, sir, that it is, as far as my experience as chairman of the negotiating team for the past 2 years, an exercise in futility, and I think maybe general counsel might want to address himself to that.

Mr. PEER. Mr. Chairman, the statistics which are offered are often offered by a partisan. We suggested in this instance, as a perfect example of how you can turn statistics around and use them for your own parochial interest—and as Mr. Leyden has indicated, the low percentage here is subject to varying interpretations, and we interpret the low percentages because unions see this as a total, complete exercise in futility.

Mr. HENDERSON. I believe the staff has prepared other questions and I would ask that they submit them to you and your staff for response and inclusion in the record, but I certainly would like to just take a minute to ask if you would comment on your experience with Public Law 92-297 which this committee, as you know, reported and became law in the last Congress. Do you have any problems with that legislation?

Mr. LEYDEN. I'd like to just preface my remarks by complimenting you, as part of that committee, and the Congress in its entirety for passing that legislation. It was the most monumental piece of legislation that the people I'm associated with have been beneficiaries of in my time. And because of the diligence of the staff people who are overlooking and overseeing the problems that we are encountering because it is new legislation, we have been able to resolve most of the problems that came up during the first 2 years.

But it has been one of the few rewarding experiences with our relationship with FAA and I think it's specifically because of Congress' overriding concern and influence in this area. That legislation has worked out very well.

Mr. HENDERSON. I certainly think you and your organization should be commended for the efforts that you made and I would hope that from time to time you would feel free to pass along to the committee if you do see problems arising. I think that any statement that you would make with regards to the effectiveness of the legislation, any comments that you might want to make with regards to the benefits that are actually accrued as related to the costs would be appreciated. I have some small inkling that the costs are perhaps higher than we anticipated and that unless we took case-by-case studies to show what did actually happen under the bill we might have some difficulty making a full judgment.

But obviously, this does not in any way affect by basic support of that legislation and I thought that it was good and I'm glad to have your response on this. I just hope that in the administration of the bill the benefits will be such both to FAA and to the controllers that there will be no questions raised as to its full effectiveness and certainly if the legislation is not working well we would want you to be in touch with us.

Let me thank you and your associates very much for your appearance here this morning and as we proceed in our deliberation and consideration not only will we pay close attention to your statement presented this morning, but certainly I anticipate we will be calling on you from time to time for assistance.

Mr. LEYDEN. Thank you, Mr. Chairman.

Mr. HENDERSON. The subcommittee will stand adjourned.

[Whereupon, at 10:50 a.m., the hearing was adjourned.]

[The following information was furnished in response to questions from the subcommittee:]

Q. Executive Order 11491 provides for an agency system of intra-management communication and consultation with its supervisors or supervisory associations H.R. 13, H.R. 9784, and H.R. 10700 are silent on such relationships. What are your views on the inclusion of this matter in labor-management relations legislation? How should the subject be handled?

*Reply*

PATCO is opposed to supervisory associations, per se, and to intra-management communication between management and supervisors on an organized basis. Supervisory associations, because of their close ties to management, have always received favored treatment from management. These associations have been allowed involvement in areas precluded to employee unions by the Executive Order by denying the fact that they are a labor union while performing a role identical to that played by a labor union. This chameleon-like quality affords these supervisory associations the rights of a union without the restraints that a bona-fide union must conform to. For these reasons, we are strongly opposed to allowing intra-management supervisory consultation in the form of associations.

We also feel that there is no need for a provision in the proposed legislation for this purpose and support the silence of H.R. 13, H.R. 9784, and H.R. 10700 on this matter. It is difficult to imagine a situation where a supervisor, who is a member of management in many respects, would not consult and communicate with the rest of management in the course of his regular employment duties. Extra consultation on an organized basis would only prejudice and subvert the relationship between management and authentic employee unions.

Q. You endorse the concept of some form of union security on page 17 of your statement. The NFFE proposed a "fair representation fee" which would serve the same purpose, but would be contingent upon an election by employees in the unit represented. May we have your views on this alternative?

*Reply*

PATCO opposes the proposal that union security be made contingent upon an election by the employees in the unit represented. This proposal begs the question of union security because the union is obligated to represent all members of the unit and cannot elect to represent some and not all. Since our representation cannot be contingent on election, it does not seem fair to allow a "representation fee" to be contingent on any election.

We do support the Canadian system of union security. There the union represents every controller in Canada and each controller pays the full rate of representation, even if he does not own a membership card.

Q. In lieu of the right to strike, there appears to be a general consensus that a viable alternative is necessary, both to move negotiations forward on a timely basis and to settle negotiating impasses. An alternative suggested has been compulsory arbitration with the arbitrator free to determine the settlement or to select from the last position or offer of the parties without modification. May we have your view on the above and, additionally any other alternatives you may care to offer?

*Reply*

In lieu of the general right to strike, I feel that the next best alternative is a limited right to strike for Federal employees. This type of right to strike for would be limited by judicial action, i.e., a restraining order or injunction, if the court decides that the commencement or continuance of the strike poses a clear and present danger to the public health and safety. This right to strike could be utilized after the exclusive representative has exhausted all attempts at arbitration and there has been no satisfactory results.

If this limited right to strike is not considered a viable alternative by Congress, then we would support compulsory, binding arbitration with the arbitrator free to determine a settlement from the best possible proposals on the entire gamut of negotiations of both sides. This gives the arbitrator the freedom and flexibility he needs for determination.

We are opposed to the "last best offer" method because it binds the arbitrator to accept the total, absolute package of proposals last made by both parties. As stated previously, we feel the arbitrator should have the flexibility to select specific proposals without regard to when that proposal was made.

Q. H.R. 13, H.R. 9784, and H.R. 10700 take varying approaches to broaden the matters and issues that are subject to negotiations between agency management and labor organizations representing Federal employees. What approaches would you suggest to broaden the scope of bargaining or labor organization participation to include regulations at the agency and Civil Service Commission levels, but not to include matters of law?

*Reply*

PATCO believes that subjects that are presently excluded from bargaining because they are matters of law, such as wages, should be subject to negotiations. This could be realized by specifically amending these laws in the proposed legislation and opening up the scope of bargaining to its fullest extent. The importance of this question can best be summed up by a quote from William J. Usery, Jr., Special Assistant to the President and Director of the Federal Mediation and Conciliation Service, in a recent address to Federal executives—

"The reason there is little true collective bargaining in the Federal sector is because there is so little that can be bargained for.

"Congress pre-empts the economic issues. Wages, pensions, medical care, vacations and holidays and insurance—all vital issues in the rest of the collective bargaining world—are determined by law.

"The result, all too frequently, is a labor contract that simply restates what management will do, providing only the right to grieve should management violate its own rules."

If the Committee, or Congress as a whole, considers this an impossible or unsuitable proposal, our position would be that negotiations should be allowed on all items that are not covered by statute and on those regulations implementing a statute where any question exists as to the meaning of that statute. There are numerous areas where the implementation of the statute by the agency has taken a direction substantially different from the one implied by the statute itself. Pre-implementation negotiation of the regulations would provide labor a greater sense of participation in the making of the rules governing their employment and, in the long run, would facilitate cooperation between labor and management in living under these regulations.

In addition, the restraining influence of the "higher agency authority" must be abolished. There can be no faith in even a limited scope of bargaining if a parent agency, or another agency, can negate previously negotiated items by fiat. Merely widening the scope of negotiations without dealing with this problem of a "higher authority" does not assure the parties negotiating that what they have negotiated will not be overruled at a later date. Any legislation which hopes to widen the scope of bargaining must contain guidelines approximating the Agency-Principal relationship that is found in the Common Law if final responsibility is to be present at the bargaining table.

The best mechanism for the negotiation of agency rulings or regulations, including those of the Civil Service Commission, which affect the employees of more than one agency, is the type of institution suggested by H.R. 10700, the Federal Labor Relations Board. We feel that the Board would be more impartial if the members were to be appointed by an individual other than the Chairman of the Civil Service Commission and that the representation of labor and management be simplified by having a rotational representation system. A rotational system would allow only one member from any agency or union to sit on the Board for the specified time period allotted, thus giving smaller agencies and unions a chance to participate.

Q. Your statement, beginning on page 8, says "management rights are an obstacle to professional input to the system." As I understand your position, you feel that unions should participate with management in technological decisions. Would you please elaborate on your views and position on this matter?

*Reply*

Our position is that employees have as much expertise and knowledge in the technical areas of their employment as management has. Employee experience should be a valuable source of input to management in these areas. Contrary to this common sense verity, management takes the position that employee organizations, the representatives of the employees and reservoirs of employee

technical expertise, have no right to contribute their views in these matters; these matters are the responsibility of management and their sole prerogative. This position forestalls the productive role that employee organizations can play in improving the system. For a specific example of this problem, please refer to pp. 8-10 of John F. Leyden's statement before the Manpower Subcommittee of the House Post Office and Civil Service Committee regarding H.R. 13, H.R. 9784, and H.R. 10700 on June 13, 1974.

In addition, some types of federal employment, particularly air traffic control, contain a special relationship between man and machine, one in which both indispensable parts must be in perfect working order. In these cases, the employee has a much greater interest and involvement with the technical equipment with which he carries out his work. The employee is fully responsible for the serviceability of the equipment before use. The Federal Aviation Administration recognizes this situation and places the responsibility for the use of equipment squarely on the shoulders of the controller. To quote the FAA Handbooks for both en route and terminal air traffic control, FAA 7110-9C, Enroute Air Traffic Control Chapter 4, Section 1, Para. 610, and FAA 7110-8C, Terminal Air Traffic Control, Chapter 5, Section 1, Para. 1156:

**"PRESENTATION AND EQUIPMENT PERFORMANCE**

"(Provide radar service only if you are personally satisfied that the radar presentation and equipment performance is adequate for the service being performed.)"

It is this responsibility which necessitates an unusual amount of knowledge and understanding concerning technical matters on the part of the controller and any other employee faced with this situation.

The present implementation of Radar Data Processing equipment is a case in point. The FAA, having spent a few hundred million dollars on developing the system, is now forced to rush the system into operation because of past political and budgetary commitments. Not only is the system still imperfect, but the employees, who must first judge the adequacy of the equipment and then utilize it, the controllers, do not fully understand how this complex, computerized system works. When do working conditions become technical matters? At present, the answer lies with the discretion of management.

For management to exclude employee input from technical matters while forcing the employee to be responsible for the implementation of that piece of equipment is contradictory at best and dangerous to the public and the employee at worst.



## FEDERAL SERVICE LABOR-MANAGEMENT LEGISLATION

TUESDAY, JULY 16, 1974

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met at 9:30 a.m., in room 210 of the Cannon House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. This morning we are continuing our hearings on pending legislation regarding labor management relations in the Federal service. The testimony we have heard thus far from the administration and labor organizations has sharpened our focus on the critical issues facing us as we consider this significant legislation. Our hearings today and those scheduled for July 25 will provide the subcommittee with testimony on some remaining important issues that must be faced as we shape the legislation before us.

With us this morning we have Mr. Frederick Walker with the Plymouth Brethren No. 4 of New York City, Mr. James Hill, representing the National Federation of Professional Organizations, Mr. Reed Larson of the National Right to Work Committee, and Mr. William Kraham of the National Association of Air Traffic Specialists.

Before our witnesses begin this morning, I would like to ask unanimous consent that the statements received by the subcommittee from organizations representing vital interests in this legislation be inserted at an appropriate point in the record of these hearings.

At the outset of these hearings, I indicated that the record would be open to include statements from organizations that would not be able to testify.

Before each member this morning are statements received from the National Association of Agricultural Stabilization and Conservation Service County Employees, the National Labor Management Foundation, and the Joint Council of Unions at the Government Printing Office.

Also, in conjunction with the testimony of the National Treasury Employees Union, Mr. Vincent Connery, the national president, submitted a position paper on labor management relations which should appear in the record following their testimony.

Without objection, the statements will appear as part of the record at the appropriate point.

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Our first witness this morning is Frederick Walker, Plymouth Brethren No. 4, New York.

Mr. Walker, if you would take the witness chair, and your associates with you may be seated at the table.

**STATEMENT OF FREDERICK N. WALKER, PLYMOUTH BRETHREN  
NO. 4, ACCOMPANIED BY ROBERT A. SMITH AND JACK WALLEY**

Mr. WALKER. Thank you, Mr. Henderson.

We do appreciate the fact that we have this opportunity to present testimony to our Government. I have on my right, Bob Smith with the TVA in Knoxville, Tenn., and Jack Walley with Social Security in Baltimore.

It seems wise to have at least two members of our church who are working currently for the Federal Government present, because I think they can, in their own simple language—we are not professionals—bear witness to the fact that we are believers in the Lord Jesus Christ, the Son of God. He, having died for each of us, has laid claim to us in our lives. We desire to be regulated in our lives practically by the word of God.

As Bob and Jack will bring out in their short testimony, scripture is a governing factor in our lives. They will refer to certain scriptures specifically. We, as a group known as Plymouth Brethren No. 4 in Government records, have meeting places in about 40 different cities across the country.

Actually, Mr. Henderson, our petition this morning is simplified by action that has been taken this month by both the House of Representatives and the Senate. We are departing somewhat from what we were going to say. I will take the liberty, if I may, of reading a couple of excerpts from documents, first of all, Mr. Perkin's conference report, dated July 3, 1974, Coverage of Nonprofit Hospitals under the National Labor Relations Act. It is very much in accord with our concern.

There was included in the hospital legislation as you would well know, a conscience clause as a result of the conference between the House and the Senate. It says in section 19 of the National Labor Relations Act as amended:

Any employee of a health care institution who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required, in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a non-religious charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code chosen by such employee from a list of at least three such funds, designated in a contract between such institution and a labor organization, or if the contract fails to designate such funds, then to any such fund chosen by the employee.

It is interesting that the wording of that amendment is similar to the conscience amendment passed by the full Senate Committee on Labor on August 19, 1965, that is attached to our statement which is before you.

Because history has jumped right into the present month of 1974 we will refrain from going into a lot of historical background. I would like to leave with the committee a small documentary for your perusal. It gives excerpts from the Congressional Record of 1965 and letters—

for instance, from Senator Williams and from Vice President Humphrey—which indicate strong sympathy with our plea.

I note that this conference report was signed by Mr. Perkins, Mr. Thompson, Mr. William D. Ford of this committee, Mr. Clay of this committee, Mr. Quie and Mr. Ashbrook, as well as 12 Senators including Senator Williams, Senator Randolph, and Senator Javits.

It was Senator Javits who carried forward that conscience amendment of August 1965 from the Senate Labor Committee and introduced it as his own bill, S. 3203, on April 6, 1966.

One more excerpt, if I may, from the Congressional Record of July 11, 1974. Mr. Frank Thompson, Jr., says:

This bill, S. 3203, was passed by the House six weeks ago by a vote of 240 to 58. The Conference Report is supported by the Administration, Labor Organizations, several State Hospital Associations—Republicans and Democrats alike. The only differences between the House and Senate Bills are two House amendments: the Religious Convictions Amendment; and the Cooling-Off Amendment. In the case of both amendments, Mr. Speaker, the Senate receded to the House, with an amendment. In each instance the intent of the House amendment was not only retained, but perfected and made more workable.

The Religious Convictions Amendment would exempt from union security agreements those health-care industry employees who belong to a religion with historically-held convictions against joining or financially supporting a union. In other words, Mr. Speaker, such an employee would not have to join a union, or pay dues or initiation fees in order to work.

The conferees on the part of the House insisted on this amendment.

The Senate receded with a proviso that such employees may be required to pay an amount equivalent to dues and initiation fees to a non-religious charity.

It is safe to say that virtually everyone connected with S. 3203 is pleased with the action of the conferees.

Finally, Mr. Thompson says later:

The Conference Report before us, as well as the bill S. 3203, represents honest compromise. As Secretary of Labor Peter Brennan said in his letter of July 8, 1974, expressing the Administration's support for the Conference Report: "although reasonable minds may disagree as to particular provisions of the Conference Report, we feel that the Conferees have resolved the differences between the House of Representatives and Senate in a reasonable way."

That Conference Report was adopted by the Senate yesterday by a vote of 64 to 29.

We understand the House did pass the revised amendment and the bill went yesterday to the President for signature.

I would say before these two gentlemen render their testimony that as far as we can see—and we didn't see this conference report until this morning—that this amendment for conscience in the hospital legislation is perfectly suited to our requirement in the Federal service legislation before this committee. In fact, we would like to see it extended to any employee, regardless of type of occupation, in the National Labor Relations Act.

This is Bob Smith from Knoxville.

Mr. SMITH. Mr. Henderson, other members of the committee, I am Robert Smith of Knoxville, Tenn., employed by the Tennessee Valley Authority. I believe in the Lord Jesus Christ and desire to be governed by the Bible, the word of God, without compromise. We desire that good conscience before God, spoken of in Acts 23, verse 1, should be fully recognized and protected.

I have worked 5 years for the Tennessee Valley Authority in Knoxville. Employees who are not union members are passed over when promotions come up. We cannot belong to or pay into associations,

trade unions, and so forth. The Bible says: "Be ye not unequally yoked together with unbelievers." Second Corinthians 6, verse 14.

I am prepared to have the equivalent of union dues and initiation fees deducted from my pay to be given to a suitable charitable organization.

George Washington wrote in his copybook: "Labour to keep alive in your breast that little spark of celestial fire—conscience."

I served in the Army for 2 years, was glad that my conscience was recognized there. Many of us served in this way, and some were turned away when applying for civilian jobs because of their consciences. Why can't there be provisions for faithful employees with genuine conscience?

We fully respect Government and laws and authority. "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God." Romans 13, verse 1.

In addition to the Military Training and Service Act, we are glad for previous provisions for genuine conscience in the legislation dealing with social security, naturalization, education, and so forth.

H.R. 10700, section 7108 seems to provide protection for our conscience, although we would prefer to see specific provision for the protection of conscience along the lines of the S. 3203 conscience amendment. This relates to nonprofit hospitals under the National Labor Relations Act; this bill has been passed and is on the President's desk for signature.

Our appeal is based simply on genuine conscience before God and is not political or in opposition to unionism. We say, "We ought to obey God rather than men." Acts 5, verse 29.

Mr. HENDERSON. Thank you very much.

Mr. WALKER. Shall we go on to the next witness?

Mr. HENDERSON. Yes, please.

Mr. WALLEY. Mr. Chairman and members of the subcommittee: I am John G. Walley, known by my brethren as Jack. I am also a believer in the Lord Jesus Christ. Being a believer, I must abide by His word, which is the Holy Bible, in its totality.

I would like to speak of two scriptures to begin with. The first is Acts 5, verse 29. The Apostle Peter in speaking to the High Priest said, God must be obeyed rather than men.

The second scripture, which has already been spoken of by Bob, I would like to emphasize: Second Corinthians, chapter 6, verse 14. It says "Be ye not unequally yoked together with unbelievers: For what fellowship hath righteousness with unrighteousness?" Therefore, we have come to appeal to you that provision be made for the conscience of a sincere believer in the Lord Jesus Christ.

I would like to stress the personal disadvantages of a union shop. There are many persons with whom I walk in fellowship who would be affected if union shops were introduced into the Federal Government with no provision for conscience.

On the basis of having a pure conscience before God, we would not be able to join or financially support the union. Many of the persons have been working for the Government for many years and would have to suffer the loss of their jobs. Quite a lot of our brethren, not in the Federal Government, have lost their jobs or been put to some other type of disadvantage because they would not join the union.

I, myself, work for the Social Security Administration, and I have tried to do my job as best I can. I have worked there for 6 years. Many times I was asked to join the union, but I have refused on the basis of the divine principle of an unequal, or diverse, yoke.

Whereas I appreciate what trade unions have done in employee-management relationships, I cannot forget what is said in Second Timothy, chapter 2, verse 19: "The foundation of God standeth sure, having this seal. The Lord knoweth them that are His. And, let everyone that nameth the name of Christ depart from iniquity."

I hope this Government under God which passed the Equal Employment Act of 1972, making it unlawful to discriminate against any employees because of religion, will provide for the conscience of my fellow believers; for without this provision, as I said before, we will lose our jobs.

Provision was made for Daniel in the old Testament Scriptures by King Nebuchadnezzar. Daniel and his friends would not eat of the king's food or bow to his image of gold. The king said, "Blessed be the God of Shadrach, Meshach and Abednego, who hath sent his angel, and delivered his servants that trusted in him, and have changed the king's word, and yielded their bodies, that they might not serve nor worship any god, except their own god." Daniel 3:28.

Provision has been made in other countries such as Australia, New Zealand and Manitoba, Canada. We have references to these provisions in our little package which we present to you.

In conclusion, we believe that section 7108 of H.R. 10700 provides protection that we need, although we prefer specific protection for conscience as in the S. 3203 amendment to National Labor Relations Act that was passed by the Senate and the House and is on the President's desk for signature.

I would like to add that in my stand in not belonging to unions, or contributing to their funds, we would be willing that some like amount of money be contributed to a nonunion charitable organization.

Thank you, gentlemen.

Mr. WALKER. Thank you.

Mr. Henderson, just one or two more comments and we will be through.

As we all know, the Pilgrim Fathers and others that came to this country in the early days were seeking religious freedom. We do pray, as our brethren here have said, that this Government under God may protect that religious freedom so vital to not only ourselves but for other believers as well.

As a personal touch, my son is up in Camp Drum on 2 weeks' Reserve training. He was in the Army, like Bob here, like myself, and very thankful to have his conscience respected in military duty.

Many of our brethren were in the front lines of Europe and over in the Far East during World War II, helping save the lives of others as medics. Some were injured. We do not want to shirk our duty. We would like to have this simple matter of our conscience protected.

It seems that the Taft-Hartley law as it now stands is really putting an employer, potentially, in conflict with the Equal Employment Opportunity Act. It appears to us that an employer with a union shop agreement may be forced to discriminate against an employee on ground of religion because of this conscience matter.

One more thing as to Manitoba, Canada, that Jack referred to. It was 2 years ago that a strong labor government listened to the testimony of our brethren in Winnipeg. They put through legislation which provides expressly for exemption from membership and paying dues provided the equivalent of union dues is paid to a mutually agreeable charitable organization.

Thank you very much.

Mr. HENDERSON. Well, can you give us an estimate of how many of your members are federally employed?

Mr. WALKER. There are not too many. To be fair, in answering the question, if we were to include postal employees—I think your committee is not directly concerned with that, but it would have a bearing on it, perhaps. I would say three or four dozen across the country.

Mr. HENDERSON. Including postal?

Mr. WALKER. Right.

Mr. HENDERSON. Do you have any questions, Mr. Taylor?

Mr. TAYLOR. I believe not.

Thank you, sir.

Mr. HENDERSON. On behalf of the subcommittee, I want to thank you and your colleagues for your appearance this morning. I think your testimony is clear and concise. We understand what you would like to see in the legislation. I feel sure we will make every effort to protect the right that you have referred to.

Thank you very much.

Mr. WALKER. We appreciate that.

May God bless the members of this subcommittee.

Mr. HENDERSON. Our next witness is Mr. Reed Larson.

**STATEMENT OF REED LARSON, NATIONAL RIGHT TO WORK  
COMMITTEE, ACCOMPANIED BY RAYMOND LOSORNIO**

Mr. HENDERSON. It is a pleasure to welcome you here this morning, Mr. Larson.

Mr. LARSON. Mr. Henderson, I am very glad to be here. We appreciate the opportunity to present our views on this question involving the rights of Federal employees versus the privileges of union organizers.

Mr. Raymond Losornio is with me. Mr. Losornio is chairman of our board of directors. I have a brief inductory statement and will give you a chance to hear from Mr. Losornio then.

Mr. HENDERSON. I welcome both of you.

Mr. LARSON. Thank you.

Mr. Chairman, members of the subcommittee, I am Reed Larson, executive vice president of the National Right to Work Committee.

Ours is a single-purpose citizens organization dedicated solely to the idea that no individual should be required to buy his right to earn a living from any private organization.

Two of the three bills before this committee, H.R. 13 and H.R. 9784 are based on the concept that the public interest is best served through Government policies which foster and promote coercive and militant trade unionism among Federal employees.

This antipublic, antiemployee bias is revealed in the provision which would authorize or even mandate the compulsory payment of fees by public employees to union organizations whose services they do not want and whose policies they feel to be inimical to the public interest.

These two bills propose that the Government abdicate its responsibility to employees and to the taxpaying public by relinquishing sovereign governmental power, notably the power to tax, to a private organization. By embracing compulsory unionism, these bills are designed expressly to further enhance the special privileges of union organizations at the expense of rights and freedoms of Federal employees, and to the detriment of the taxpaying public.

Certainly, the Federal Government has an overriding responsibility to treat its employees fairly. It is commendable—and indeed essential—in our opinion, that this committee should be devoting careful consideration to the subject of employee-employer relations. However, establishing independent private organizations and giving them the power to levy taxes on Federal Government employees is not a responsible basis on which to deal with this matter. Rather, the problems of employee relations should be met head on through enlightened public policy in which the rights of each Government employee and the taxpaying public are paramount.

We commend you, Congressman Henderson, for including in your proposal, H.R. 10700, language which will preserve for all Federal employees their full freedom to choose whether or not to support any employee association. In preserving the employee's freedom of choice, the Federal Government is following a sound and unassailable course. That example is now emulated by a substantial majority of the 50 States.

To date, 33 States have adopted prohibitions against compulsory unionism in their public sectors. These include 16 States which have not yet enacted right to work laws applicable to private sector employees.

I would like to comment on the statement of the previous witness, who has put in very clear perspective one of the vital questions of employee rights. In connection with his mention of the Postal Service, I would like to remind him and the record, that postal employees are protected in their right to work without being compelled to support a union because of the amendment to the postal reorganization bill, which was spearheaded by the chairman of this subcommittee.

I think that is a very, very important victory for the rights of individuals and one we need to keep in mind, keep before us, as this continuing subject of Federal employee rights is being considered.

Each one in the parade of union professionals before this committee who has demanded compulsory dues payments from Federal workers has based his plea on a totally spurious complaint.

Union spokesmen deceptively claim that nondues paying employees are "free riders," asking you to compel hundreds of thousands of Federal employees to pay money to unions whose representation they do not want.

What these professional unionists do not tell you is that the "free rider" complaint is a red herring of their own creation. They dreamed it up strictly to line their own pockets with the hard-earned dollars of Federal employees who believe that union action is doing them more harm than good.

The logical solution to this union-contrived "free rider" argument is not at all difficult—and it will enhance, rather than erode, the constitutional rights of Federal workers. All Congress needs to do is

simply to provide that union officials will represent only those employees who want to be represented by the union. Our committee has long been on record in support of this solution to the "free rider" use. The deafening silence of union officials in response to this proposal or this offer of ours is convincing evidence of their insincerity when they complain about "free riders."

Again I want to commend Congressman Henderson for taking significant initiative toward solving the "free rider" problem by including in your bill a provision that would relieve union officials of what they contend is the "burden" of processing grievances for non-dues paying employees. The reaction of professional unionists to this eminently fair proposal again discloses their duplicity. They want the monopoly status of exclusive representation. With this extraordinary privilege, they then attempt to justify their demands for taxing employees who do not believe that their interests are served by the union.

I want to go on record at this time renewing our willingness to support any union official who sincerely wants to solve the "free rider" problem by assisting him in obtaining legislation which will eliminate the requirement of exclusive representation.

It is now my privilege to introduce Raymond I. Losornio, chairman of the board of the National Right to Work Committee.

**STATEMENT OF RAYMOND LOSORNIO, CHAIRMAN OF THE BOARD  
OF THE NATIONAL RIGHT TO WORK COMMITTEE**

Mr. LOSORNIO. Chairman Henderson and members of the subcommittee, thank you for the opportunity to appear here today to present our views on the subject of employee-management relations in the Federal service.

I am Raymond Losornio, chairman of the board of directors of the National Right to Work Committee. I have been a public employee for 33 years, a voluntary union member for 22 of those years and I am a former president of my local.

We believe that every working man and woman, in both the public and private sectors, should have a guaranteed right to form, join or assist an employee association if they choose to do so. We believe just as firmly, however, that every employee should be guaranteed his right to refrain from joining or assisting such a group—that every employee should be protected against being compelled to pay dues to any private organization as a condition of earning a living. Former Supreme Court Justice Louis Brandeis once observed that "the ideal condition for a union is to be strong and stable and yet have in the trade outside its own ranks an appreciable number of men who are nonunionists. Such a nucleus of unorganized labor will check oppression by the union as the union checks oppression by the employer." We subscribe to Justice Brandeis' wisdom. We heartily endorse the right to work protections provided by section 7108(c) and 7109 of H.R. 10700.

Compulsory unionism in private employment is bad enough, and its harmful effects are widely recognized. But compulsory unionism in Government is unthinkable. When an American decides to follow a career in the Federal Government, for example, his career should not depend upon whether or not he joins a labor union. Merit is the



fundamental concept behind our civil service system. That merit system would be compromised and ultimately destroyed if compulsory unionism were ever permitted to become a part of our civil service.

The freedom of choice for Federal employees to support or not to support unions has been defended throughout our national history by many of our most respected leaders of Government, from President Theodore Roosevelt to the current incumbent. President Kennedy made freedom of choice a matter of clear-cut national policy when he said, in his own famous statement of principle as a part of Executive Order 10988, "Employees of the Federal Government shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal to form, join and assist any employee organization or to refrain from such activity." This principle has been reaffirmed by President Johnson and President Nixon, and is now embodied in Executive Order 11491 as amended.

President Kennedy's Secretary of Labor in 1962, Mr. Arthur Goldberg, said: "I know you will agree with me that the union shop and the closed shop are inappropriate to the Federal Government. And because of this, there is a larger responsibility for enlightenment on the part of the Government union. In your own organization you have to win acceptance by your own conduct, your own action, your own wisdom and your own responsibility and your own achievements. And let me say to you from my experience representing the trade union movement that this is not a handicap necessarily \* \* \*. Very often the union that has won the union shop will frankly admit that people who come in through that route do not always participate in the same knowing way as do people who come in through the method of education and voluntarism. So you have an opportunity to bring into your organization people who come in because they want to come in and who will participate, therefore, in the full activity of your organization."

Justice Charles Evans Hughes declared the right to work to be a plain and self-evident principle of American constitutional law when he said nearly 60 years ago, "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the amendment to secure." The amendment of which he spoke, as you know, was the 14th amendment to the Constitution.

Now under consideration are two proposals for legislative action which would scrap freedom of choice in favor of a revolutionary, radical, and highly controversial policy of compulsion.

Both H.R. 13 and H.R. 9784 are seriously defective in that they propose a fundamental departure from longstanding Federal policy by opening the door to compulsory agency shops in the Federal service. Compulsory unionism—compelling employees to pay money to a union or be fired—is based on the false premise that union representation is always beneficial to all employees. In truth, the agency shop, which is nothing more than an arrangement in which employees are required within a certain time limit to "pay up or get out," is a startling confession by union bosses that the union is so unattractive it requires coercion in order to get and keep members.

We know of no demand from Federal employees themselves to do away with the guarantee of their freedom to work at their jobs without being compelled to join or support in any way a labor union. We do know that a handful of union officials avidly seek new special privileges to help them impose their will on Federal employees and on the public.

In any legislation dealing with labor-management relations in the Government service, priority consideration has got to be given to protecting the interests of the responsible, dedicated employee, the taxpaying public which provides and pays for the jobs, and all citizens in general. The compulsory unionism which would be mandated by H.R. 13 and H.R. 9784 could benefit no one except salaried union officials and those "union favored" candidates for public office who receive campaign support from union treasuries. Approval of this kind of proposal for compulsory unionism would serve only the narrow interests of union officials and entrench them further at the expense of the rights and freedoms of millions of Federal employees, taxpayers, and citizens.

Mr. Chairman, there is clear proof that this is plainly contrary to the convictions of an overwhelming majority of the American people. A nationwide survey of public attitudes in this regard, completed just 2 months ago by Opinion Research Corp., shows that 70 percent of the total U.S. public think that there is already too much power concentrated in the hands of officials of unions in this country. Furthermore, two out of three American voters favor a working arrangement wherein a person can hold a job whether or not he belongs to a union. I have prepared a summary of the survey findings which I ask to be included in the written record.

The wishes of a majority of Americans have been expressed also by many of our country's outstanding leaders and reflectors of public opinion. Because of time limitations, I have not included examples of these expressions in my statement, but I will be happy to provide them for the record if you wish.

Previous witnesses have urged you to place the power of the Federal Government on the side of union organizers and against the Government employee as an individual.

Mr. Clyde Webber in his statement to this subcommittee on June 5, claimed for himself and for his union, the American Federation of Government Employees—a private organization—a stature and status equal to that of the U.S. House of Representatives. Under no circumstances in our system of government can any private organization, such as a labor union, be granted responsibilities and obligations reserved for sovereign governments alone. Mr. Webber's equating his or any other private organization to any agency of any sovereign government cannot go unchallenged.

The spokesman for the AFL-CIO, in his June 5 testimony, tried to justify the union shop, or "agency shop" as "basically a means through which the union can bring about in the minds of the employees it represents a recognition that the gains they achieve through collective bargaining are the result of the union's work on their behalf."

This ridiculous statement infers that an employee lacks the intelligence and foresight to determine for himself whether or not the activities of the union are beneficial. The truth of the matter is that the

average employee in the private sector and possibly even more so, those in the public sector, have the intelligence and reasoning ability to decide whether or not a union is truly beneficial to them. The choice for membership or nonmembership should be predicated on the voluntary desires of the employee based on his personal assessment of the union's worthiness.

This really is the same argument which was written to the editor of the Chicago Daily News by a union professional in 1963. He wrote: "... why then do many wage-earners hesitate about joining a union? Because they hear a lot about unions being 'communistic' and because the average wage earner (alas) is often like a child, a child who does not know where its best interests lie. Just as a mother often forces her child to swallow the medicine it needs to make it strong, so a good labor leader must often force laborers to join a union for their own good. If the average man looking for a job lacks the education, or intelligence, to join a union, he must be forced, if necessary, to do so." The truth is that Federal employees do have "education or intelligence" in sufficient degree to permit them to decide voluntarily that a union may be (1) useless, ineffective, or even detrimental in representing their interests; (2) promoting causes and ideologies with which they disagree; or (3) supporting politicians whom they oppose. Consequently, they do not wish to join or support such an organization.

What these proponents of compulsion argue, in effect, is that the agency shop is a compromise between full freedom of choice and compelled membership in their private organizations. This argument has been discredited by supreme courts of several States. The North Dakota court, for example, has just ruled that an "agency shop" provision "imposes the equivalent of compulsory membership in such labor organizations as a condition of continued employment."

Insulation of the public employee from partisan political activities is one of the cardinal principles of sound personnel management relations in government. Sacrificing this principle would result in Federal employees being bludgeoned into supporting political candidates whom they would not otherwise support. This is precisely what happens when they are told they must pay money to a union boss or be fired.

Such compulsory union shop contracts covering Federal employees can become the most reprehensible form of "sweetheart agreements." This is, as you know, the term which describes private sector union contracts written for the benefit of the union boss and the management boss at the expense of the employee. With Federal employee unions, this easily becomes a deal in which the incumbent officeholders obtain union campaign support in exchange for forcing all employees to fork over dues to union treasuries.

The record of political involvement by labor unions over the years is clear and unchallenged. I have some examples of this involvement covering several years to illustrate this point. Again, because it would entail too much time to read them, I ask that they be included also in the written report of these hearings.

The need for ironclad protection against compulsory unionism is further underscored by the fact that, under present policy, civil service protection against political pressure on Federal employees has already been seriously eroded. The unique privilege of exclusive representation

has already been granted to certain labor organizations which engage actively in politics. This arrangement, as you know, is sometimes called exclusive bargaining rights, and provides that if 50 percent plus one of the employees in a unit designate a particular union as their bargaining agent, all the remaining employees—as many as 50 percent minus one—lose their right to bargain for themselves or through another agent of their choice. They are compelled, in fact, to accept as their agent a private organization they do not want.

In this regard, the Executive order is defective. In granting this extraordinary privilege of monopoly bargaining power, the Executive order has forced responsible associations of public employees to become militant trade unions in order to survive. A case in point involves my own union, the National Federation of Federal Employees. Dr. Nathan T. Wolkomir, president of NFFE, told the Republican Platform Committee in 1968: “ \* \* \* we do very strongly affirm that those who seek to deny Federal employees freedom of choice by a hardfisted game of freezeout should be given no encouragement.” But the fact remains, unless Dr. Wolkomir and NFFE are designated exclusive representatives in a given bargaining unit, they cannot represent the 50 percent minus one who are NFFE members. The NFFE reaction is predictable—it has become a militant proponent of compulsory unionism. Dr. Wolkomir, in a tragic about-face, endorsed the agency shop concept proposed by legislation you are now considering.

I vigorously protested this shift in policy in a letter to Dr. Wolkomir. I would like to read a brief excerpt from that letter, and ask that the full text be made a part of the written record of this proceeding. I wrote: “The forcible collection of ‘agency shop’ blackmail from Federal workers on the basis of the ‘representation fee elections’ you propose would be a perversion of the majority rule principle. Granting absolute power to a majority of employees inevitably leads to tyrannical acts by their leaders.” Thank goodness I am free to resign, if I so choose, from my union because of this policy with which I disagree, without any fear of intimidation or discrimination. If the Brasco or Ford bills become the Federal standard for Federal employee-management relations, however, I could resign and refuse to support this policy only if I were prepared to give up the job I have held for 33 years.

A Federal Government employee loses a vital part of his political independence when he is forced, in order to deal with his employer, to be represented by a political organization posing as a labor union. A Jerry Wurf of AFSCME recently bragged to Time magazine, “We were afraid to politicize the union, and we got nowhere, so now, we are political as hell.” To have any part at all in formulating the policy for that exclusive representative—which may be political as hell—which has been forced on him, he is compelled to join and pay dues on the union’s own terms. In many Government employee unions, those terms include the organization’s endorsement of candidates; the use of union staff personnel, publications, and other resources in political campaigns; and promotion of a wide range of ideological objectives with which the Government employee may disagree.

Even casual research will disclose dozens of examples of this sort of union activity. According to the July 1 edition of the Washington Star-News, for one recent example. “The National Education As-

sociation is planning a \$4 million political offensive this year to support its friends and defeat its enemies in Congress and state offices."

Section 3, clause II of the Civil Service Act reads as follows: "Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund or to render any political service, and that he will not be removed or otherwise prejudiced for doing so."

That protection would be wiped out by enactment of H.R. 13 and H.R. 9784 as presently written. Forcing a Government employee to kick funds into union treasuries which would be used for political and ideological causes is an outright repudiation of the very foundation of the civil service system.

Mr. Chairman, members of the subcommittee, we urge you to reject H.R. 13 and H.R. 9784 and any other bills which destroy or erode in any manner the present policy banning all forms of compulsory unionism in the Federal service.

We urge you to include in any bill approved by this subcommittee the language now provided in section 7108(c) of H.R. 10700: "Nothing in any agreement under this subchapter shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization, except pursuant to a voluntary, written authorization by a member."

Mr. Chairman, subcommittee members, this concludes my statement. I thank you.

Mr. HENDERSON. The items which you mentioned in your statement will be placed in the record at this point.

[The material referred to follows:]

## 1974 OPINION RESEARCH CORPORATION "CARAVAN SURVEY"

### Summary of Findings

**Question:** Do you think there is or is not too much power concentrated in the hands of labor leaders of the big unions in this country?

	Total U.S. Public	Union Members	Union Households	Men	Women	Clerical Sales	Craftsmen Foremen	Other Manual Service	Profes- sional
Yes, There Is .....	70%	60%	61%	71%	70%	78%	70%	64%	76%
No, Is Not .....	19%	34%	31%	21%	16%	15%	22%	25%	17%
No Opinion .....	11%	6%	8%	8%	14%	7%	8%	11%	7%

**Question:** In some places in order to hold a job you have to belong to the union and pay dues. Do you think union officials should be permitted to use this dues money to campaign for political candidates, or should this be forbidden?

Should Be Permitted	12%	17%	15%	14%	10%	13%	11%	14%	17%
Should Be Forbidden	79%	78%	79%	79%	79%	83%	85%	74%	79%
No Opinion .....	9%	5%	6%	7%	11%	4%	4%	12%	4%

**Question:** Which of these arrangements do you favor for workers in industry: 1) A man can hold a job whether or not he belongs to a union; 2) A man can get a job if he doesn't already belong, but has to join after he is hired; 3) A man can get a job only if he already belongs to a union; 4) No Opinion.

1. ....	68%	43%	49%	67%	69%	68%	69%	61%	76%
2. ....	24%	48%	42%	26%	22%	25%	25%	31%	19%
3. ....	3%	6%	6%	4%	3%	1%	3%	4%	3%
4. ....	5%	3%	3%	3%	6%	6%	3%	4%	2%

**Question:** Some states have passed Right to Work laws which provide that a worker cannot be discharged from his job for either joining or not joining a union. If you were asked to vote on such a law, would you vote for or against it?

Would Vote For ....	69%	60%	61%	68%	70%	76%	67%	63%	85%
Would Vote Against .	20%	31%	30%	23%	18%	17%	26%	23%	10%
No Opinion .....	11%	9%	9%	9%	12%	7%	7%	14%	5%

**Question:** The Right to Work laws we have been talking about are permitted under Section 14(b) of the Taft-Hartley Act. If Congress keeps Section 14(b) of the Taft-Hartley Act it means that states can continue to have Right to Work laws if they want. If Congress repeals Section 14(b) of the Taft-Hartley Act, it means that states cannot have Right to Work laws. Which do you think the Congress should do?

Keep Section 14(b) .	74%	69%	74%	73%	75%	84%	78%	71%	83%
Repeal Section 14(b) .	11%	21%	15%	14%	8%	8%	11%	11%	10%
No Opinion .....	15%	10%	11%	13%	17%	8%	11%	18%	7%

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POLITICAL INVOLVEMENT BY LABOR UNIONS

1. An attorney representing the UAW told the U.S. Supreme Court in 1956: "The only funds available to the union are those that come from dues, for the purpose of buying radio time, television time, and newspaper advertising. The small amount that has been collected as voluntary dollars has all gone as very small contributions to the candidates . . . . When he (a union member) pays his dues, he has paid for his political action."

2. After a thorough examination of the compulsory union shop as it already operates in private industry under sanction of an Act of Congress, Justice Hugo Black wrote in 1961: "The stark fact is that this Act of Congress (giving federal sanction to compulsory unionism) is being used as a means to exact money from these employees to help get votes to win elections for Parties and candidates and to support doctrines which they are against."

3. On October 2, 1968, the Wall Street Journal described the AFL-CIO's use of hundreds of paid union staffers to aid Mr. Humphrey's campaign as "a move that is, at best, in the gray area of legality."

4. Authoritative labor columnist Victor Riesel reported on November 11, 1968: "America's labor leaders poured out well over \$60 million for Hubert H. Humphrey."

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5. Unions undertake voter registration functions on a highly partisan basis. In many respects they have entirely taken over this function for one of the two major political parties. Al Barkan, Director of AFL-CIO COPE, in describing organized labor's role in the 1968 elections, stated, "In many states labor did the registration job for Humphrey single handedly; the Democratic party had abandoned the field." (Barkan, Issues in Industrial Society, Vol. 1, No. 2, Cornell University School of Industrial Relations).

A total of 72, 225 union staff personnel were involved in unions' get-out-the-vote effort in 1968, according to Mr. Barkan. As he states, "In many states, a house-to-house canvass was conducted as part of our get-out-the-vote drive."

6. The following opinion was issued in 1970 by the U.S. Court of Appeals for the Ninth Circuit:

"The diversion of the employees' money from use for the purposes for which it was exacted damages them doubly. Its utilization to support candidates and causes the plaintiffs oppose renders them captive to the ideas, associations and causes espoused by others. At the same time it depletes their own funds and resources to the extent of the expropriation and renders them unable by these amounts to express their own convictions, their own ideas and support their own causes." (Seay et al v. McDonnell-Douglas et al, 427 F. 2d 990)

7. The following statement was made in April 1971 by Local 558's Recording Secretary, Bernard McNamara, who joined other union members in a lawsuit against UAW officials: "The members of (UAW) Local 558 are sick and tired of seeing their dues money spent on political candidates and various leftwing causes which we oppose ... in the case of our local, it has been done contrary to an express resolution adopted by an overwhelming majority of the membership."



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8. The formation of a "committee on political education" to support "candidates favorable to the union" was approved by the United Federation of Teachers (AFL-CIO) in New York in May 1971. It resolved "to raise \$1million both through voluntary contributions and dues," according to a New York Daily News article.

9. Delegates attending the 1971 Teamsters Union convention in Miami Beach last July authorized the union's general president "to make expenditures from the general fund in amounts to be determined by him in his sole discretion for lobbying and other political purposes, including contributions to candidates for state, provincial and local office."

10. AFL-CIO Secretary-Treasurer Lane Kirkland, while addressing the Amalgamated Transit Union convention in Las Vegas, Nevada, on September 28, 1971, exploded the myth that union political activities are merely "aimed at union members and their families." While vigorously attacking President Nixon, he said: "Over the next 13 months labor and its political arm -- COPE -- has a great deal of work to do. We have to carry our message to every American eligible to vote, and we have to make sure that they understand what America's choices really are. And we have to make sure that every voter we can reach is registered, and that they go to the polls."

11. In the March 10, 1972 newsletter, "The Local Line," published by the New York Public Library Guild, Local 1930, had this to say: "Agency shop is a necessary element in this bargaining. But unions need funds for more than mere job bargaining; they need them to further the needs of the working man in general and for political power."

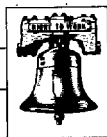
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12. In the October 30, 1972 issue of "Industry Week," it was estimated that COPE's total payroll was approximately 125 full-time employees. According to "Industry Week," "COPE's operating expenses are funded directly from union treasuries, which are sustained by members' dues. Union treasury money also finances COPE's educational activities such as registration drives, get-out-the-vote campaigns, and printing of voting records of legislators."

13. Catherine Barrett, president of the National Education Association, campaigned on a promise to get a day's pay from every teacher in the nation for "political action." Her goal: "With upwards of \$50 million in a campaign war chest, teachers will be the most effective political power brokers in this nation."

14. United Auto Workers Administrative Letter, Vol. 24, No. 9, August 2, 1972 announced that the union will rebate, on request, union dues spent for partisan political purposes. The rebate amount will be \$3.68 per member per year. That amounts to roughly \$5,000,000 in dues money for one union, as compared with less than \$900,000 in "voluntary expenditures reported by that same union to the Clerk of the House in 1972.

15. In its Report to the Tenth Convention, October 18, 1973, the AFL-CIO Executive Council boasts: "By any standard of measurement, the COPE program in 1972 exceeded any previous year -- more volunteer manpower and womanpower and more full-time staff assigned by international unions; increased funding; more effective and better organized registration and get-out-the-vote campaigns; improved precinct-level organization."



A COALITION OF EMPLOYEES AND EMPLOYERS

## NATIONAL RIGHT TO WORK COMMITTEE

1990 M STREET, N. W.

WASHINGTON, D. C. 20036

TELEPHONE: 294-0720—AREA CODE 202

June 25, 1974

Dr. Nathan Wolkomir, President  
National Federation of Federal Employees  
1737 H Street, N.W.  
Washington, D. C. 20006

Dear Dr. Wolkomir:

I am, as you know, a voluntary, dues-paying member of the National Federation of Federal Employees and a former president of NFFE Local 386. For the past 20 years, while other unions worshipped at the altar of compulsion, I have proudly identified myself as a member of a union which has consistently supported full freedom of choice for all federal workers.

It is my understanding that NFFE policy opposes all forms of compulsory unionism, including any arrangement which compels non-members to remit "agency shop" fees to a collective bargaining agent.

I was stunned to learn that you, while testifying earlier this month on our union's behalf to a congressional subcommittee, recommended a new law which would obligate non-union federal employees to pay monthly fees to certified unions whether or not they feel the unions are doing a good job. Presumably, employees refusing to submit to this denial of their freedom of choice would be discharged.

No other interpretation can be made of the remarks on Pages 30 and 31 of your June 12 statement to the Subcommittee on Manpower and Civil Service of the House Committee on Post Office and Civil Service.

My files contain a copy of your report to our federation's 1968 convention, which I attended as a delegate. You stated on that occasion:

"The NFFE, above all else, now provides the career federal employees with that precious and priceless commodity, freedom of choice."

. . . continued

"Americans Must Have the Right But Not Be Compelled to Join Labor Unions"

7

Dr. Nathan Wolkomir  
June 25, 1974  
Page 2

You also warned that the AFL-CIO was determined "to establish a monolithic and pervasive union in the Federal service -- a union that would be dominated by outsiders and would have a vise-like grip on the whole employee body at virtually every level and in every department and agency."

You continued, "... without the NFFE there literally would be no practical, viable alternative to that monolith whose announced and unvarnished purpose is to wring tribute from every career Federal employee."

Dr. Wolkomir, has our federation abandoned its historic opposition to wringing tribute from career federal employees? If not, by what authority did you embrace the indefensible "agency shop" ruse?

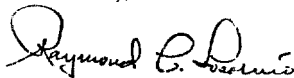
Your 1968 denunciation of the apostles of compulsion is as valid today as it was six years ago. I fear the NFFE's days are numbered if it follows the tragic example of those union officials who are bent on destroying the federal employee's freedom of choice.

The forcible collection of "agency shop" blackmail from federal workers on the basis of the "representation fee elections" you proposed would be a perversion of the majority rule principle. Granting absolute power to a majority of employees inevitably leads to tyrannical acts by their leaders.

The U.S. Supreme Court observed 30 years ago that the purpose of our Bill of Rights is to place cherished individual rights "beyond the reach of majorities." The Court ruled that "fundamental rights may not be submitted to vote; they depend on the outcome of no election."

Dr. Wolkomir, I appeal to you to withdraw your endorsement of the "agency shop" concept. It is a tool of avaricious union officials whose primary concern is gaining personal political power.

Sincerely,



Raymond C. Losornio  
Chairman of the Board

RCL/gl

Mr. HENDERSON. Mr. Larson, is the National Right to Work Committee, a nonreligious, charitable organization, exempt from taxation under section 501(c)3 of the Internal Revenue Code?

Mr. LARSON. Chairman Henderson, the Right to Work Committee is exempt under 501(c)4 of the Internal Revenue Code.

It is the category, I believe, referred to as social welfare organizations or action organizations by Internal Revenue.

Mr. HENDERSON. Well, would a provision such as has been adopted in the hospital bill referred to earlier, that sums equal to such dues or initiation fees be paid to nonreligious, charitable organizations, exempt from taxation under section 501(c) without designating subsection 3, do you imagine that there would be any possibility of your committee being designated as one to receive those in lieu of dues?

Mr. LARSON. I think it is a safe assumption that the union negotiator would never agree to put us on the approved list.

The thing they want most is compulsory unionism. That is the thing we are against. We are just at an impasse.

Mr. HENDERSON. Is it fair to say that you believe that a Federal employee ought to have a right to do what he wants to do with his money, he ought to be able to pay it to the Right to Work Committee if he chooses to join and support it?

Mr. LARSON. I certainly think that is correct. Many Federal employees do believe strongly, just as our chairman does, in the principle of freedom of choice and they support the committee for that reason.

Mr. HENDERSON. Thank you both for your statements this morning. I think they were very succinct and they put the issue well in focus. The gentleman from Missouri?

Mr. TAYLOR. Thank you.

Mr. Larson, would you please give us a little more background and information about the National Right to Work Committee? Who does it include and approximately how many members do you have?

Mr. LARSON. Well, the National Right to Work Committee is a non-profit organization, incorporated in the District of Columbia and exempt, as a social welfare organization, under 501(c)4.

It is governed by a board of directors made up of a cross section of citizens. A number of members of our board, like our chairman, are union members or former union members. We have several employers, housewives, professional people. The governing body is a representative cross section of the American scene. Our support comes in the form of voluntary contributions from a broad base of small contributors representing all kinds of interests, small businessmen, individual citizens, professional people, some union members, and many rank and file working people.

Mr. TAYLOR. How many States have a right-to-work law, Mr. Larson, at the present time?

Mr. LARSON. There are 19 States which have laws that prohibit compulsory unionism in private employment.

There are, I believe I indicated, 33 States that have State laws or constitutional provisions prohibiting compulsory unionism in State and local government.

That number, I might point out, was increased just in the last couple of months when Louisiana adopted a new State constitution that included a right-to-work provision for its public employees, except schoolteachers.

For some reason that did not include schoolteachers. The legislature is in the process right now of passing legislation—it has passed one house and has nearly passed the second house—which will protect freedom of choice for schoolteachers in Louisiana.

Mr. TAYLOR. Thank you.

Mr. LARSON, are you in agreement with the concept that an employee in lieu of joining a union would make a contribution to a non-charitable, or nonreligious charity?

Do you feel that this is in keeping with freedom of choice?

It seems to me that it is almost as arbitrary as maybe making them pay the union dues.

It is the carrot and the stick approach, it would appear to me.

Are you in agreement with this particular concept?

Mr. LARSON. We have never taken an active role—

Mr. TAYLOR. It is a denial of freedom, too, is it not?

Mr. LARSON. It is. We have never had occasion to go on public record on this question. We do not quarrel with it on the basis of those who found it was an adequate avenue of relief for the problem of religious conscience, but I could say that I agree with you and I do completely, that it is an unjustifiable infringement on freedom of choice, and also the agreement to anything like this, by a union official, is again a repudiation of the "free rider" concept.

They justify this compulsory dues payment on the basis that workers are supposed to be paying the union for some services, services that those people do not want, admittedly.

If the "free rider" is such a problem for these union officials, then they have not solved their free rider problem by compelling an individual to pay money to some other private organization. It is, in effect, a penalty for his refusal to support a union that he does not want, a union that has been imposed on him and whose principles are in violation of his own conscience.

We certainly do not consider it a satisfactory solution to the problem of compulsory unionism, but we respect the people who have worked this out and who feel that it is an adequate solution to their particular problem of conscience.

As far as we are concerned, it is not an adequate solution. It is an admission by union officials that they will penalize an employee because he will not pay money to a union that is not acting in his interest.

Mr. TAYLOR. Thank you.

Thank you, Mr. Chairman.

Mr. HENDERSON. Mr. LARSON, I obtained consent for insertion into the record of the 1974 research opinion survey to be inserted into the record as per your request. I believe that you recently had an announcement of this survey and I want to request that you provide the staff of the committee, for possible inclusion into the record, more background information on the Opinion Research Corp., when the survey was conducted, and as much of the methodology and so on, in support of the summary findings.

Do you recall that the survey, or this same information, was widely publicized in newspaper advertisements by your committee?

Mr. LARSON. Yes, Mr. Chairman, the summary was publicized. In answer to your question, we are delighted to have the opportunity, and we will provide all the members of the subcommittee with a complete

copy of the entire study, including the explanation of the statistical basis on which the samples were selected and how the interviews were conducted.

This is all included in a comprehensive report which we will be more than pleased to provide to the committee.

Mr. HENDERSON. I think, without objection, I would ask that our staff have the authority not only to receive that information from you but to select and prepare it for insertion into the record. The summary findings that you have presented are quite comprehensive, and I think it should be supported by such information as you might supply us.

Mr. LARSON. We appreciate the opportunity to do that.

Mr. HENDERSON. May I thank both of you for a fine presentation this morning.

I appreciate the cooperation that you have rendered to our staff in the preparation of your appearance this morning. It has been quite helpful.

Mr. LARSON. Thank you very much, Mr. Chairman, and Congressman Taylor.

[See p. 501 for the document referred to.]

Mr. HENDERSON. Thank you, sir.

Our next witness is James D. Hill, executive director of the National Federation of Professional Organizations.

Mr. Hill has with him a large number of witnesses. Mr. Hill, you and all of the witnesses may come forward to the witness table.

Mr. HILL. Mr. Chairman, Mr. Kraham tells me he has quite a short statement. I would be happy to yield to him.

Mr. HENDERSON. We are delighted to arrange that, Mr. Kraham.

**STATEMENT OF WILLIAM KRAHAM, NATIONAL ASSOCIATION OF  
AIR TRAFFIC SPECIALISTS, ACCOMPANIED BY JOHN ENLOW,  
UNION PRESIDENT, AND LAWRENCE CUSHING, VICE PRESIDENT**

Mr. KRAHAM. Mr. Chairman, I am William Kraham. I serve as counsel for the National Association of Air Traffic Specialists. I have with me on my right our union president, Mr. John Enlow, from Minneapolis, and on my left, Lawrence Cushing, vice president, from Augusta, Maine.

Mr. HENDERSON. Welcome, gentlemen.

Mr. KRAHAM. For a moment, I might mention, Mr. Chairman, that our association represents over 4,000 employees who operate about 330 flight service stations throughout the Continental United States and at overseas installations, including a number in Alaska and the Pacific regions.

The flight service stations, if you will permit me, serve as the operations offices, if you will, for general aviation. They, in effect, are the lifeline of general aviation to the extent that perhaps the operations offices of airlines are for airlines are for airlines throughout the country.

We appreciate, Mr. Chairman, this opportunity to present our views on proposed legislation to improve labor management relations in the Federal service.

The present management of the system in the Federal sector by executive orders, memoranda, directives, and other administrative fiat

must give way immediately to laws providing for equitable and effective labor-management relations. These hearings on H.R. 13, H.R. 9784, and H.R. 10700 represent a major first step toward the ultimate goal of greater equity in labor-management relations in the Federal sector.

It is unfortunate that there has been an inordinate delay in the establishment and implementation, by law, of uniform rules and regulations for the conduct of labor-management relations in the Federal sector. Meaningful relations and collective bargaining has made in the private sector.

Additionally, these gains have produced more than an equitable climate between labor and management. Reasonable approaches in collective bargaining serve to strengthen our economic system. Collective bargaining has helped Americans achieve the highest standard of living in the world. Collective bargaining is democracy at work in the economic system. Now, without delay, it is time to set forth on a course leading to a sound and equitable labor-management relations program in the Federal sector.

Under the present system of labor-management relations by fiat, Executive Order 11491 provides that the triple entente comprising the Federal Labor Relations Council, the Department of Labor, and the Federal Service Impasses Panel shall ride herd over labor-management relations in the Federal sector. That the Federal Government permits three separate bodies to issue directives, memorandums, orders, and rules and regulations governing labor-management relations accounts largely, we believe, for the current state of affairs giving rise to these hearings.

The policy direction and much control of the existing system is exercised by the Federal Labor Relations Council. The Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and the Secretary of Labor constitute the council. All of these gentlemen are competent in their fields, but it does not necessarily follow that their membership in FLRC creates an impartial council.

Executive Order 11491 grants the FLRC extraordinary prerogatives in wielding its power over labor-management relations. Its members should be serving on a full-time basis.

I want to make it clear that no individuals are being singled out for criticism, but we believe and are of the opinion that, perhaps without intending such at the time of its origin, Executive Order 11491 has, in fact, created conflicts of interest in the very selection and continuance in office of current members of the FLRC.

For example, the Director of the Office of Management and Budget holds the keys to the treasury, and pulls the strings tied to operating needs of agencies, and he exercises extraordinary control over the hiring of thousands of Federal employees.

Is it really possible for him to be impartial in his role as a member of the Federal Labor Relations Council?

The Federal Service Impasses Panel is an impartial body; however, in 4 years it has considered only a hundred or more cases. Its members serve on a part-time basis; although they apparently have met on almost a monthly basis. In a recently reported history of the panel there is set forth, in part, the following statement on page 1.



Acutely aware that the institution of collective bargaining is undergoing evolutionary development in the federal establishment, the Panel has attempted to avoid actions which might inhibit the growth of the bargaining process. It constantly seeks to prevent its services from being used as a substitute for the parties' own efforts.

The foregoing statement is commendable; however, through no fault of the panel, meaningful collective bargaining in the Federal sector is really an illusion. There is no real quid pro quo in labor-management relations in the Federal Establishment. A review of the record covering our own contract negotiations and those of other unions demonstrate clearly that labor relations are managed in all respects by management of the Federal Government.

In fact, it has been our experience in one situation where we made a significant win via the grievance route, the contract provision covering the matter was summarily withdrawn as non-negotiable by FAA/DOT actually during the course of contract negotiations.

That is like holding a gun at labor's head. It became a matter of great concern to the union.

I will touch on this deficiency a little later.

The only "evolutionary development" of labor-management relations in the Federal establishment referred to above by the impasses panel is, in our opinion, some limited progress made under Executive Order 10988 and its successor, Executive Order 11491. These have indeed been useful to a better understanding of the problems extant in the labor relations system. However, Executive Order 11491, as amended, and the very anomalies created by it in the course of recent experience offer ample evidence of its serious deficiencies.

We want to state at this time that all of the bills under review by this subcommittee appear to clearly delineate the salient points for our most serious consideration, with one exception. With all due respect to the chairman, we believe it mandatory that the civil service chairman should neither be a member of any newly created board or authority, nor cloaked with power of appointment thereto.

Such involvement raises too many questions concerning total, unequivocal impartiality, the heart of equitable labor-management relations. Otherwise we support, in principle, most of the major proposals set forth in all three bills. Therefore, it is our purpose at this time to set forth a few basic tenets, without support of which, we believe, any legislation in this area might run the risk of merely attaching a new label to Executive Order 11491.

Our recommendations, therefore, are as follows:

1. Any newly created board or authority must be impartial; unequivocally so.

2. The limited right to strike as set forth in H.R. 9784 appears to afford sufficient safeguards against its abuse. What really amounts to an "assertion" or "right to call" is appropriate for consideration at this time.

There appears to be a lot of support for this. We think it is time to address ourselves to this problem and stop fighting otherwise. We believe such language should be in the bill considered by the committee.

3. Provision for immediate binding arbitration during contract negotiations and related proceedings is essential in all cases.

This, of course, done appropriately, would eliminate any threat of strike.

4. Management rights must be redefined. Agencies must not be allowed to deny negotiations and hide under the management rights cover every time a union wants to discuss basic working conditions, schedules, overtime, and related matters.

5. Labor should be equally represented on any newly created board or authority, and likewise should be equally represented with management in any and all matters where the parties are met.

6. In view of the effect of recent decisions requiring unions to represent all employees in the unit—I might say we have experienced that. We have no objection to that.

However, the concept proposed for some financial security and support from all of the members seems to merit consideration. We fully understand it is a difficult problem. Certainly, when we were chartered as a union and won exclusive national recognition under the Executive order, I might say, the first in the United States, we did so with the clear understanding that this would be the case.

If it is the committee's judgment that it should continue, we will abide by that. On the other hand, if the committee feels that some provisions should perhaps be made—and I won't discuss them at length, there has been a lot of testimony—we would naturally go along with any such recommendation.

7. During any elections, investigations, negotiations, hearings, grievances, and in related matters, provision should be made for total official time status for involved union officials and members. Clearly, this will never exceed the official time used by management. Unions ask for as much time as, not more than.

8. In addition to the reference contained in paragraph 4 above, the subject of matters appropriate for negotiation requires serious study. It seems to us that the matters considered "conditions of employment" should be at least as complete as those in both H.R. 9784 and H.R. 13.

9. There must, of course, be language and intent clearly defining collective bargaining accompanied by language as required to insure appropriate enforcement. For example, as set forth in H.R. 9784.

In conclusion, we express our thanks for being permitted to submit our views concerning the proposed legislation. We are confident that out of these hearings will come a much broader understanding of the problem areas now before us. To avoid redundancy following several other witnesses, we have attempted to set forth only those items we believe to be of greatest importance, and additionally, where in some instances other witnesses may not have given sufficient attention.

Thank you very much. We are ready to answer questions you may submit.

Mr. HENDERSON. Thank you, sir.

On page 5, in your item 7, relating to official time, the word grievances used there refers to grievances of the negotiating agreement rather than individual employee grievances, does it not?

Mr. KRAHAM. Yes, that would be the case. There is provision already for official time for individual grievances. That might be expanded, however, in the course of your hearings.

Mr. HENDERSON. Mr. Kraham, would you explain your organization's relationship within the FAA organization? We had testimony from the Professional Air Traffic Controllers Organization. Is there any overlapping in membership?

Mr. KRAHAM. I am delighted you asked that question. There is no overlapping, sir. To this extent there might be considered to be overlapping.

The air traffic system of the Federal Government, Federal Aviation Agency, is comprised of GS-2152 series employees comprising controllers in towers, centers, and flight service stations. They are all equal in that respect.

Over the years, there has been some separation thereby, and the community of interest among controllers, in centers and towers, obviously has been such that they sort of separated themselves, as have flight service, from each other.

The flight service stations operate—personnel, rather, operate all flight service stations. One of the marked differences, I might point out right now that the chairman is probably aware of, although we are subject to the same medical examinations and the same provisions of the system and the same entrance requirements, our people thus far—and I don't want to get into another committee—we have been—our people have been denied, for example, second career training and early retirement.

However, we are finding as we testified before your committee. I think, the principal committee, a couple of years ago, the incidence of medical retirement is higher. We operate for the same employer; but there's no overlapping, really, of the job in day to day duties.

In fact, when we entered labor hearings 2½ years ago, I was able to win for the flight service personnel, in effect, a separate community of interest showing we should in fact be a separate unit as opposed to centers and towers. They likewise have their own union.

So we really, through the use of the facilities of labor at our disposal now, have in fact widened that gap so that we are a separate entity, a separate union.

They would probably, in other words—there would never be the chance to merge the three, if that serves to explain the difference. I wouldn't see a chance at this time, unless we arrived up the road somewhere and get equal rights and benefits such as second career for our employees which we are working diligently on right now.

Mr. HENDERSON. Has your organization experienced the same problem in negotiations with FAA vis-a-vis DOT that PATCO testified to?

Mr. KRAHAM. Precisely. In other words, riding herd over the organizations, the Department of Transportation is calling the shots. In fact, when we run into an impasse, there are urgent phone calls made to the Department of Transportation. Usually in 10 or 15 minutes, a department man is on the scene. There is no question about that.

To that extent, we are quite similar to PATCO, let's say.

Mr. HENDERSON. The gentleman from Missouri?

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. Kraham, there has been some effort made, I believe, to close some flight service stations around the country. On one of our appropriation debates on the floor 2 weeks ago, there was a move to close 30, I believe, next year.

Mr. KRAHAM. Yes, sir.

Mr. TAYLOR. This was precluded by an amendment which I supported. I wondered if you had any comment relative to the movement

toward closing or combining flight service stations as, in your opinion, this may be off the subject?

Do you think this will seriously impair the service the flight service stations offer?

Mr. KRAHAM. Yes, I do, sir. If I may address myself for a moment to that.

I am familiar with the Shoup amendment which was introduced and which, for about five pages in the Congressional Record, many members expressed their concern. In fact, last year our group was instrumental in generating a similar interest which prevented this very thing, last year, from happening.

I might add in view of the House amendment, the matter is now before the Senate. I have been privileged to work closely with Members of the Senate; and we already have 52 Senators signed in a joint letter to the chairman, Mr. Byrd, which effectively prohibits the FAA from again attempting to close those stations. I might say for any of the members of the committee, we are good for another year.

Mr. TAYLOR. Mr. Kraham, do you recommend binding arbitration during contract negotiations and related proceedings as being essential. I would be interested in knowing, would you give us your views on how you would fit binding arbitration into the negotiating process?

Mr. KRAHAM. Well, a case immediately comes to point. There are two factors involved, really.

One, for example, last year when I gave the incident where during the bargain process, a provision was withdrawn effectively as being nonnegotiable, merely because we won the case from the arbitrator during the proceeding 2 or 3 months before we started negotiations. We in fact won a major victory from an arbitrator. The FAA and the DOT panicked because it involved the rewriting of all parking regulations. They immediately filed an appeal.

During the negotiations, with John Enlow present, they said, "We can't give you that provision anymore."

Here is why it is important. At that point in time, I think we should have been able to—rather than go to an impasse panel, and holding up the effectiveness of our contract, and in fact our dues—we should have been able to go immediately to binding arbitration and say, "Well, now, is this negotiable, or isn't it?" and express the experiences on having won the case.

In other words, why was it in fact negotiable a year ago? There is only one way we won that grievance. It had to be a provision in the contract.

It seems to me, and I so indicated to FAA and DOT at the time, that it—if it will be a case of every time a union demonstrates equity to the outside arbitrator in a grievance and wins the case, and then that provision in the contract is going to be carved out of the contract, we are going to negotiate ourselves down to less than nothing.

So binding arbitration at any stage of the negotiations, when we are drawing up the very contract provisions is the lifeblood of what we are here for.

Mr. TAYLOR. Thank you.

Thank you very much.

Mr. HENDERSON. You recommended management rights needed to be redefined.

With regards to the closure of the flight service stations that the gentleman from Missouri raised—and I am very appreciative that he did. It is a matter the Congress has had before it; and we have had great interest in it.

Would you question the right of management to make that decision within the authority granted by the Congress? In other words, what we actually experienced here is that the Congress has clearly indicated they do not want those flight service stations closed; but that would not be a negotiable matter for contract?

Mr. KRAHAM. No. I agree. That is why I said this area is really a touchy area. We would be the first to admit it.

We do not interfere, necessarily, with the right of the agency to accomplish its given mission. On the other hand—and we think we have now persuaded the Congress and the U.S. Senate that where we feel the implementation of a certain edict or directive is wrong, we can effectively now, without being under contract, correct it. This is excellent proof, I think. I wouldn't say that we would have to be that unyielding insofar as the contract.

What we had reference to mainly in connection with the management rights, now for example, management rights, really, in some of our recent cases, have said, "Well, no, you cannot pay—we do not have to pay overtime because a guy is sick, because it is our first duty to see that there is coverage there."

Really, in effect, we lost a recent decision where management is injecting management rights into every facet, nook, and cranny of the contract every time they want to back out.

Mr. HENDERSON. The effect of what happened in the incidents that you related of winning your arbitration and then having the Department of Transportation draw that back and say it is not negotiable, they redefined management rights by that action, didn't they?

Mr. KRAHAM. Yes, that's correct.

That precisely is what happened in that case.

In other words, management rights is sort of like the floating interest rule. In other words, whatever applies at a given time, management wants to apply.

Mr. HENDERSON. So the point you are making is that those things that are management rights, to the extent that they can be, we would agree that it should be defined; and those things that are negotiable should remain negotiable?

Mr. KRAHAM. Right. I think, Mr. Chairman, if I may, a good rule of thumb would be what comes out of the wash as negotiable, applying this test of binding arbitration in the event there is a dispute as to whether a matter should be negotiable will ultimately, I think, create an equitable situation.

With the advice and counsel of outside binding arbitration, in a question where a matter should be within management's rights or not, I think equity will wash those out and refine management rights so that everybody will be satisfied.

Mr. HENDERSON. Tell me a little bit more about your negotiating experience for and on behalf of the flight service station employees. You have a national exclusive?

Mr. KRAHAM. That's correct.

Mr. HENDERSON. Your negotiations are at the Federal Aviation Agency?

Mr. KRAHAM. National level, yes, sir. We have one contract. We negotiate in Washington, D.C.

Mr. HENDERSON. You find that your negotiations are subject to the Department of Transportation direction?

Mr. KRAHAM. No question about it. Let me cite one other real sore example.

It may not be of notice to the committee, but one of the points we are fighting really hard for this year is what they call the SF-160 program. That is, as space permits on airlines, an air traffic control specialist, center, tower, or station, and the part 224, I think, of the CFR provides this same right to the air traffic specialist in the flight service station.

The agency over the years has refused to negotiate that point with us. Yet over the same period of years, they have relieved their structure of management rights to include center and tower personnel in that, but have excluded us. This is yet another example of how they—you know, they stretch these rights to suit themselves.

Now it is not costing the Federal Government anything. The airlines tell us they would be pleased to have us ride in the jump seat.

Our people, as a matter of fact, Mr. Chairman, our people are the people who are actually more concerned with the weather and we are advising general aviation pilots, who are less experienced, sometimes, and that it is much more essential, if the facts be known, that our people have a greater need to see what the inside of a cumulus cloud looks like, or any other front forming, or weather generally, and so forth. This can best be accomplished by access to aircraft flown by airlines under the SF-160 program.

Here is yet another example of where the FAA and DOT say no, we will not extend or even talk about in a contract, the same privilege for you people.

So it is more than just against unions generally. They sometimes particularize and treat one a little better than another. We think that ought to be wiped out, too.

Mr. HENDERSON. Have you looked at the provisions of the bill that Chairman Dulski and I introduced with regards to negotiations on the agency regulations? If you have, my question would be how would you envision the operation of that bill pertaining first to FAA regulations? Would you still think that if you were negotiating under the bill on FAA regulations, that you still would have the override of the Department of Transportation when we are talking about regulations of the agency, that is, the Federal Aviation Agency, within the department? Or are you going to have to negotiate their subject to the override of the department?

Mr. KRAHAM. I see your point, Mr. Chairman. I see what you are trying to get at. It seems to me, under the present structure, although there may be some relief granted in the bill—your bill—that you are still going to have the DOT riding herd on whatever interpretation is made in the process of certain legislation.

Mr. HENDERSON. Let me ask you perhaps a more elementary question. How do you view negotiations of agency regulations prior to their promulgation as opposed to negotiations in the—as you do now, after the regulations have been promulgated?

This is a very essential and important element of the bill that we

provided, and one that is quite controversial from management's viewpoint.

They don't support the bill in that regard.

Mr. KRAHAM. Well, I appreciate what the provision in your bill is trying to do; and I really would like an opportunity to study it again and send commitments to the committee.

Mr. HENDERSON. I would like you to take a look at it. It is possible that both your experience and that of PATCO here, as you testified with regards to the problems of the agency within the department could be helpful to us as we consider that.

Mr. KRAHAM. I certainly will address myself to that. I think I can give you a more thoughtful response if you will give me a couple of days.

Mr. HENDERSON. You might wish to confer with the staff on it. I will ask the staff to make themselves available to you.

Mr. KRAHAM. Fine.

Mr. HENDERSON. Available for this and any supplemental statement you might want to supply us on this point. That would be helpful.

Thank you, gentlemen, very much for your appearance this morning.

Mr. ENLOW. Thank you.

Mr. KRAHAM. Thank you very much.

Mr. HENDERSON. It was a pleasure.

Mr. Hill, if you and the others accompanying you would come forward as witnesses.

**STATEMENT OF JAMES D. HILL, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF PROFESSIONAL ORGANIZATIONS, ACCOMPANIED BY LARRY FISHER, SECRETARY-TREASURER; ROY OLSON, PRESIDENT; HARTLEY BOWEN, NAVAL CIVILIAN ADMINISTRATORS ASSOCIATION; GEORGE BRADLEY, EXECUTIVE DIRECTOR, ORGANIZATION OF PROFESSIONAL EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE; PAUL ROBBINS, EXECUTIVE DIRECTOR, NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS; WILLIAM HUGHES, GENERAL COUNSEL, NATIONAL ASSOCIATION OF FEDERAL VETERINARIANS; DR. CLARENCE PALS, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF FEDERAL VETERINARIANS; ROBERT CALOGERO, PRESIDENT, ASSOCIATION OF SENIOR ENGINEERS; DEAN FRAVEL, NATIONAL ASSOCIATION OF GOVERNMENT ENGINEERS; AND JOHN KING, EXECUTIVE DIRECTOR, AIR TRAFFIC CONTROL ASSOCIATION**

Mr. HENDERSON. It is a pleasure to welcome you, Mr. Hill.

Mr. HILL. Mr. Chairman, as our prepared statement states, we are an association that this morning represents 14 professional societies. We have quite a few of our people with us this morning.

We have, at the other end of the table, Mr. Larry Fisher, the Secretary and Treasurer of our Association; then Mr. Hartley Bowen from the Naval Civilian Administrators Association; Mr. Roy Olson, the President of our Association; Mr. George Bradley, the Executive Director of OPEDA; Mr. Paul Robbins, the Executive Director of

the National Society of Professional Engineers; Mr. William Hughes, general counsel of the National Association of Federal Veterinarians; Dr. Clarence Pals, Executive Vice President of the National Association of Federal Veterinarians; Mr. Robert Calogero, President of the Association of Senior Engineers; Mr. Dean Fravel from the National Association of Government Engineers; and Mr. John King, Executive Director of the Air Traffic Control Association.

We have other members in the audience.

The present Executive order presumes to regulate three different kinds of associations: Unions, associations of supervisors, and other Federal employee groups.

You have heard from the unions. I think this is the only occasion on which you will hear from the other two. We may, therefore, take a little longer than the other speakers.

We join with the unions in thinking that a law is necessary on this subject. We are also Federal employees. We also have our problems with management as professional associations and associations of supervisors. Sometimes our problems are different, but we do have our disputes. We have not been able to get them resolved under the present administrative system.

So, we also think a law is necessary. We like H.R. 10700 and, as other organizations, we want to suggest some amendments to it to take care of our problems.

While I was routing around in some of my old papers the other day looking for something in connection with my testimony, I ran across a letter from 1968 we got from one of the Presidential candidates that year, Mr. Nixon. You may remember he had what was called a Great Issues Committee headed by Senator Tower. They put out position papers on various subjects. One of them was Federal personnel policy.

In September 1968, he wrote us and said:

Dear Mr. Hill:

Because of the interest of your organization in federal personnel policies, I thought you might like to have a copy of a statement I have issued on this subject. There is much that has to be accomplished in the new administration. I know I will be able to count on your cooperation with me and responsible federal officials to see our mutual goals are achieved.

Sincerely, Richard Nixon.

Attached was his white paper on Federal personnel policy, only one paragraph of which is pertinent to this morning's hearings. He said:

I intend further to propose legislation which will insure the participation of federal employees in the formulation of personnel policies directly related to their employment. This legislation should further recognize the right of a federal employee to join an employee organization (as unions were then known) if he chooses to do so and should provide for meaningful consultation between employee organizations and those in positions of management. The legislation should spell out procedures to insure that charges of unfair labor practices can be heard expeditiously by an independent forum.

After 6 years, when the committee chairman and others introduced legislation on this subject we were somewhat sorry to see the administration send up a representative to oppose enactment of the bills.

We think that what was said in 1968 was correct and that there should be legislation, and that it should be supported by the administration.



Mr. HENDERSON. I guess what you are saying is that the legislation referred to there has not been recommended to the Congress?

Mr. HILL. As far as I know, it has not been recommended, and in fact has been opposed. Perhaps Mr. Hampton wasn't on the 1968 mailing list.

You have heard from the unions; they do have their legitimate complaints. For the most part, we support them wholeheartedly. They have told you about their inability to get their problems resolved under the present Executive order. We professional societies and associations of supervisors have suffered the same inability.

First, in 1966, the Johnson administration held hearings for a week on methods to improve Executive Order 10988. We then raised some of the problems that professional societies had. We mentioned that most of our officers were supervisors and we couldn't qualify as unions without disqualifying all of our officers. We objected that supervisors couldn't be included in units represented by unions, and so forth.

Nothing was done about it. The President took no action on it. The Secretary of Labor wrote a report that was never issued until the end of the administration.

In 1970, the Federal Labor Relations Council held further hearings. We again testified. So did the unions.

Nothing was done about our objections. We objected at that time that we were losing our dues withholding privileges, that supervisors couldn't be included within units; that we had no enforceable rights to deal with agencies; and that once a professional got into a unit, there was no way he could vote to get out of it.

Nothing was done about that, except that after the end of the hearings, the Council issued a statement that they had considered a number of matters but hadn't taken action on them. Nos. 2, 3, and 4 were provided a separate executive order covering agency relationships with professional organizations; (3) authorize professional organizations rights similar to those provided for associations of supervisors; (4) establish a policy concerning the severance of professional employees for decertification purposes.

New hearings were again held in 1973, and we thought these would be the first items on the agenda. We wrote to the Council and suggested it. They weren't put on the agenda at all. Furthermore, no professional societies or associations of supervisors were even invited to testify.

We just have received no consideration whatever.

The Federal Bar Association appointed a task force 2 years ago to study Executive Order 11491. It concluded that a law was needed to make the system work. It said that the Federal Labor Relations Council serves as an agent of an employer who is interested in maintaining the status quo. Last, it said the program seems grounded on reaction rather than action.

I thought that was unduly complimentary. We haven't been able to get any reaction from the Council at any time on any subject.

So we are very happy to be here. We would like to tell you our problems—which we have raised repeatedly before the executive branch with no relief.

First, in our prepared statement, we discuss the subject of dues withholding. The Congress, in 1961, enacted a law—that emanated from this committee—that Federal employees could make allotments from their salary for various purposes.

The Congress didn't define the purposes. It said for whatever purposes the head of the Department may deem appropriate.

That became law. The President then issued an Executive order delegating to the Civil Service Commission the administration of this new law; and it immediately took away from the Department heads their authority that the law gave them to define the purposes for which allotments of salary might be made.

The Civil Service Commission issued regulations saying for what purposes allotments could be made; and they were for such things as the purchase of U.S. savings bonds, contributions to combined charity drives, payment of state income taxes, overseas employees giving allotments from their salary to their families back home, allotments to banks for savings, for premiums on life insurance, and so forth.

Also, the CSC regulations said that an employee may make an allotment from his salary for his dues to any employee organization which had received formal or exclusive recognition under Executive Order 10988. The CSC used the law as a tool for a union checkoff, but no other employee organizations could have the same privilege.

The then Administrator of the Federal Aviation Administration wanted to provide for dues allotment privileges to two of the agency's professional societies, the Air Traffic Control Association and the Airways Engineering Society.

He asked the chairman of the Civil Service Commission for permission, and the chairman denied it. He said, no, this is just for union checkoff, no other purpose.

So the two associations, and the FAA, came to see the committee staff director, Mr. Charles Johnson, and he said, why, that isn't true. We passed this law before there was a Federal Labor Relations program. That wasn't created until 1962.

He said, I worked on that bill and I personally know it wasn't intended for any such purpose.

Then Mr. Beckworth, then chairman of one of the subcommittees of this body, and Senator Monroney, chairman of the Senate committee, wrote letters to Chairman Macy of the Civil Service Commission. They said, in effect, you are using this law erroneously. We didn't intend that there be discrimination between various kinds of organizations of Federal employees.

Finally, Chairman Macy backed down, and changed his regulations to say that professional societies could also have dues withholding. He did it in a odd way. The regulations had permitted dues withholding for dues to any employee organization that had qualified for exclusive or formal recognition.

He just added a phrase that said, "or could qualify."

Well, all an organization had to do to qualify was to have a democratic constitution and promise not to strike and represent at least 10 percent of the employees in its specialty. Then an association could qualify, at least for formal recognition. Various Federal professional societies in various departments had dues withholding under this regulation, until 1971 when the new Executive order became effective, and canceled the dues withholding for professional societies.

We appeared before the Council and protested. They bucked us off to the Civil Service Commission. The Civil Service Commission didn't do anything about it.

So we haven't had dues withholding since. We think that is wrong. We think that the law is being misused. It was never so intended.

We certainly don't object to dues withholding for labor unions. We think it is very important, necessary and just that they have it. The amount of time and money that an organization has to spend on membership purposes just to stay even, to compensate for the 5 or 10 percent that don't renew every year, all of which can be avoided by due withholding, makes it very important.

We would like to have the 1961 law administered and applied the way the Congress intended it. There is a provision in H.R. 10700 to provide for dues withholding to unions. We have suggested an amendment which would include other lawful employee associations. It is attached as an attachment to our prepared testimony.

As a matter of fact, the present provision applies to the union dues of employees in a unit. That means it would only apply to those cases where a union has won an exclusive. We see no reason why every member of a union shouldn't have dues withholding. The agencies tell us that they do their payrolls now by computer, and they can deduct for as many organizations as a man wants to make allotments to, and it doesn't cost anything. I think the unions are paying 2 cents per deduction now. We understand that it doesn't cost the agency anything. That is what the agencies tell us.

That is our first complaint.

Second, relations between agencies and professional societies. I have mentioned that under the present Executive order there are three kinds of organizations covered.

First of all, there are the unions, called labor organizations; then section 7(d)3 says in effect, that recognition—exclusive recognition of a unit does not preclude a department from having dealings with veterans organizations, religious, social, professional or other organizations not qualified as a labor union. That was also in the predecessor Executive Order 10988. It has been there since the beginning, in 1962. Then section 7(e) says an agency shall establish a system for intra-management communication and consultation with its supervisors or associations of supervisors.

So, there are these three categories covered by the Executive order. The trouble that we professional associations have is that section 7(d)3 is not mandatory. It doesn't say, as section 7(e) does, that an agency shall establish a system for dealing with professional societies; it says exclusive recognition of a union shall not preclude it.

Some agencies don't communicate with professional societies of their employees any more. Agencies that used to do it don't do it now. They will sometimes say to us privately, that they are getting terrific pressure from their unions not to have any dealings with anybody else. Some agencies simply don't like to have dealings with employee groups so they take advantage of the permissive nature of section 7(d)3 not to have any dealings with us.

H.R. 10700 repeats verbatim, I think, the language from the Executive order in section 7106(L) (3) on page 18 of the committee print of October 3, 1973. It repeats that recognition of a union shall not preclude an agency from having discussions with professional or other associations.

We respectfully urge the committee to alter the language to require agencies to set up systems for informal discussions with employee associations. That, like section 7(e), would be a requirement and would not be permissive. We have suggested language to accomplish that purpose in attachment B to our prepared statement.

Professional societies have need to discuss matters with management. We don't have need to engage in collective bargaining. We should qualify as a labor union if we wish to do that. That is appropriately their field.

Mr. HENDERSON. I noticed you had that in your statement. It leads me to ask this question: Inasmuch as the bill by its nature primarily deals with labor management relations, would you object to a separate piece of legislation that could deal simply with the subject of agencies consulting with nonunion organizations and the provisions with regard to checkoff for those organizations?

What I am suggesting is that if we did not deal with that in this bill, would you object to separate legislation covering that particular problem?

Mr. HILL. No. Obviously we favor such legislation. However, of the two alternatives, we would hope that it all gets passed in one bill. I think that there is a great deal of support for this legislation which should not be fragmented.

We have in our prepared statement, referred to the fact that back in 1961 President Kennedy first appointed a task force headed by Secretary of Labor Goldberg, to look into the question of whether a labor-management system for Federal employees should be established. Secretary Goldberg's report recommended the recognition of labor organizations, then called employee organizations, but he also said that this recognition should not affect special relationships that already existed between the Government and veterans' organizations and religious, professional, and social organizations. His report said:

The task force feels that there should be no objection to management officials dealing with such associations on matters involving individual members, or on matters involving individual members, or on policies having particular application to their group, such as work schedules on a religious holiday, even though exclusive recognition has been granted to another employee organization.

That is a direct quote from Secretary of Labor Goldberg's report. Obviously that report is not from somebody who was ignorant of the labor relations field. He thought it was perfectly proper for the Government to have a labor relations program, but still to have informal dealings with professional societies and veterans' organizations and similar groups.

The trouble is it has not worked, because of the permissive nature of the language. We ask that that be amended to make it a requirement that agencies create systems for dealing with these groups.

Just to give you an example of what can happen under the present system, I will refer to the Federal Aviation Administration again. In the late 1960's, the then administration was strongly in support of professional societies. The present management of the agency is not; and as a matter of fact, it has issued an internal policy order, and a statement to all of the professional societies of its employees that they may not talk to the agency about any matter that could have anything to do with personnel policies or practices or working condi-

tions. You know, when you think about it, it is hard to think of any subject of mutual interest to an agency and its employees that could not affect employee working conditions.

The FAA has a merit promotion plan as all agencies do. It is a decentralized agency, so its regional offices have their regional orders implementing the merit promotion plan. These give points for various things such as for a sustained superior performance award; for having an engineering degree; for years of experience. One of the regional plans has a provision in it giving so many points for an employee's activity in his professional society. Well, one of the FAA unions found out about this recently, and just raised Cain. It is now in national negotiations with the agency.

We have heard that one of the demands made by this union is that this provision be stricken from the merit promotion plan. Two of the professional societies that belong to our group and that have FAA employees, wrote to the agency, a mild letter, saying we hope you will stick by your guns and keep this in your merit promotion plan. They got very nasty letters back saying, you may not talk to us about this, this is a matter affecting employee working conditions. We will refuse to continue to recognize you as a professional society if you write us letters like this.

Here is a matter that affects all of the members of these two professionals unless a majority of the professionals vote to do so. That is and engage in collective bargaining about it; but the professional societies can't even talk to the agency about this matter that primarily affects their own members.

Now that is what is happening to Federal professional societies today, because of section 7(d)3 of the Executive order. There is a similar provision in your bill, sir, and we would like it strengthened.

Now to go on to another one of our complaints; the definition of a "professional." Under the present Executive Order, and under H.R. 10700, a professional may not be in a unit together with nonprofessionals unless a majority of the professionals vote to do so. That is also a provision of Executive Order 11491. A unit may not be created if it includes both professional and nonprofessional employees unless a majority of the professional employees vote for inclusion in the unit.

The Executive order does not define who is a professional. That has been added by a decision of the Assistant Secretary of Labor, which took verbatim the definition from the National Labor Relations Act which says that you have to have a college degree and more than a college degree, a postgraduate degree, to be a professional. It is an old-fashioned definition that largely limits the term to the areas of law, medicine, and engineering. This just is not realistic for the Federal service today.

This decision was added by the Assistant Secretary in a case called the *Department of Interior Riverside* case, involving some employees of the Bureau of Land Management. The parties stipulated that range conservationists and wildlife management specialists were professionals. This was for an election requested to be held by NFFE. These persons had to have a college degree, 30 hours major in biology, and on-the-job training after that, and the union had agreed they were professionals. The case then came up on appeal on other matters before the Assistant Secretary. He held they were not professionals. He

adopted the definition from the National Labor Relations Act, that a general academic education is not sufficient.

The Department of Interior filed a petition for review with the Federal Labor Relations Council, saying there had been no opportunity to prepare in advance, no opportunity to prepare exhibits or testimony or arguments, no opportunity to call witnesses, there was no prior knowledge this question was even at issue.

The FLRC refused to hear the appeal. They have a certiorari type of appellate jurisdiction, and declined to hear it.

Since then the FLRC has applied the same definition in other cases to historians, librarians, operations research analysts, and all kinds of people who have a general academic degree with a major in a particular subject or its equivalency.

As the chairman knows, several years ago, there was a group known as the job evaluation and pay review task force. I am sure that the chairman is more familiar with that than anybody here. It recommended a new job evaluation systems, broken down into six categories. One of them was professionals.

The task force presented a position paper on professionals. It said there are over 600,000 of them in the Government today. Technology that used to take centuries to develop into professions are doing so today in a decade. The task force quoted Fredrick C. Mosher, who says that 36 percent of all professional, and technological workers are employed by governments, and that one-third of all Government employees are engaged in professional and technical pursuits. This is more than three times the comparable portion in the private sector. Mr. Mosher added:

For better or worse, for better and worse, much of our Government is now in the hands of professionals, including scientists—it is unlikely that the trend toward professionalism in or outside of Government will soon be reversed, or even slowed.

So, here is a group of 600,000 people in the Government who have their special interests. For one thing, they are entitled to a separate vote on whether they want their own collective bargaining unit to consider their own problems, or be in a unit with other kinds of employees. But, because of a definition dragged out of the 18th century, many of them are being denied this right. Their interests are not being taken care of.

We respectfully suggest to the committee that it do not utilize the definition contained in H.R. 10700, but that it utilize instead, the more liberal definition which is in H.R. 9784, section 3(g). We quote it on page 26 of our testimony. It does not require a postgraduate degree, for one to be classed as a professional. It does not require a college degree. It requires knowledge in a field of learning customarily acquired by specialized study in an institution of higher education, or its equivalent. The NLRB definition only includes persons educated in an institution of higher learning, or a hospital. This means there is one class of people, and one class only, that can qualify as a professional by on-the-job training, nurses. We think there are many others who learn their specialty in on-the-job training, and who are equally entitled to be classed as professionals. We think air traffic controllers should be; and others, because they have the equivalent of 120 academic hours in on-the-job and correspondence schooling.

Mr. HENDERSON. Mr. Hill, may I refer back to page 17 of your prepared statement, on your recommended language for the bill. You ask that the language of H.R. 9784, section 6(f)3, be included; and as I understand—well, let me read it:

(3) a unit including both professionals and nonprofessionals shall not be appropriate unless a majority of the employees in each category indicate by vote or other credible evidence that they desire to be included in such unit.

What other credible evidence would you suggest? Let me ask this question first:

If you drop those words "or other credible evidence" and indicate that you had to have a vote of both, the language is somewhat different than that in the bill 10700. Would that be sufficient?

Mr. HILL. Oh, yes, yes. I don't know what was in the mind of the drafter of H.R. 9784, but as a guess, I assume he is referring to authorization cards.

Mr. HENDERSON. Well, I was, too.

But it would seem to me that we ought to spell that out if we do intend that.

Mr. HILL. I have no special interest in those words at all.

Mr. HENDERSON. It would be sufficient if you require a vote—a separate vote of the two categories?

Mr. HILL. Yes, sir.

Mr. ROBBINS. If I may insert, I think the engineers would prefer the secret vote and not the cards.

Mr. HILL. That language on page 17 of my prepared statement refers to a matter that I skipped over, in my oral remarks. The present language of Executive Order 11491 states that a professional gets to vote on whether he wants to be in a combined unit, but the other people in the unit don't get such a vote. This would cure that.

Then on the next page of my prepared statement is the other objection we would like to be corrected in the legislation. That is, under the present Executive order, once a professional is in a combined unit under the present administrative system, he can't vote to get out of it. Frequently he gets in through ignorance. He doesn't know at the beginning that he had a right to a separate vote on whether his professional group should be included or not.

At recent hearings held by the Federal Labor Relations Council, they didn't take any testimony from professionals. However, there was one bit of testimony on this subject that leaked in by accident, from the American Nurses Association, testifying as a union. It is also a professional society. It complained that many of their nurses got blanketed into a combined unit because they didn't know they had a right to a separate vote. Then when they later wanted to organize a separate unit as nurses, they found they could never get out. The lady who testified for the American Nurses Association said that nurses weren't sophisticated about labor law. I think that is true of almost every professional. We are sophisticated about our own profession, but we don't know when a vote is held that we have a right to a separate vote. We then, sometimes almost by default, find ourselves combined in a unit with other types of employees.

Under the present Executive order, that is a one-way street. There is no way you can ever get out. When the American Nurses Association later comes around to organize the nurses at that hospital, they

find they are already represented by some clerical union and they don't know how they got there. They can't ever get out.

Professionals have complained about this for years to the Federal Labor Relations Council and its predecessor under the prior Executive order, to no avail. And so we now ask that an amendment be made to the bill on this subject. It appears on page 18 of our memorandum; and as attachment C, which would permit a decertification election for professionals in a unit.

Now, on the status of supervisors.

The present Executive order states that a unit cannot be created if there are any supervisors in it.

There is another section that says that supervisors cannot be active in their labor union. The unions have always complained about this. They have complained about it before this committee. I have read Dr. Wolkimer's testimony. He complains at great length about this. We agree with him. We think this is unrealistic in the Federal service.

I read Chairman Hampton's testimony. He said the Federal service is unique, and that is why we need an Executive order. He said that we shouldn't have a law which molds everything into concrete. You know, really the fact is the other way around. On the subject of supervisors, the present Executive order uses verbatim, word for word, the definition out of the National Labor Relations Act, just as it does on professionals, although neither definition is proper for the unique situation that exists in the Government. The present administrative system is the one that hasn't taken any regard for the uniqueness of situations in the Federal service. That is why employees are wanting a law.

So our second alternative that we recommend is that supervisors be permitted to organize as unions, but in separate units from non-supervisors.

There isn't even the equivalent of section 7(e) in your bill, sir. We think there should not only be that equivalent, but that it should be stronger than section 7(e) of the Executive order. It shouldn't provide just for management consultation. It should give these people the status of a regular separate labor union.

Our third recommendation is to give supervisors a choice, as professionals have, on whether they want to be in a unit with non-supervisors, or in their own unit. We recommend that one of those three proposals be added to the bill.

There are several other matters on pages 32, 33, and 34 of our prepared statement that are of lesser importance. Because we have three other people that want to be heard, I would like to pass over them at this time.

Let me say again that the Executive order is supposed to cover three diverse groups: Unions, supervisors, and professional societies. On the latter two, the Council has always taken the position that it has no right, or that it is not going, to regulate them or to force agencies to obey their obligations. They regard section 7(d)3 and section 7(e) just as language addressed solely to agencies.

But the section of the Executive order that grants to the Council the right to administer the order doesn't say you shall administer all of this order but section 7(d)3 and section 7(e). It says you shall administer all of it.

But the Council says to us, no, you go talk to the Civil Service Com-



mission or to your agency about your problems. We are not going to do anything about section 7(d)(3) or 7(e).

We have quoted extensively in our prepared testimony from various authorities who say that the average supervisor in the Government really isn't a part of management. We agree that it is all right for management officials to be excluded from activity in the union and unionization and from inclusion in a unit, but lower level supervisors who don't meet the definition of a management official shouldn't be excluded.

We, like the unions, urge that something be done about this. We think there are three possibilities. We set them out on page 30 of our testimony.

One would be just to permit supervisors, who are not truly management officials, to be included in units together with nonsupervisors.

A second would be to permit supervisors to organize as unions, but in separate unions, as some State laws now permit, like the law of the State of New York, for example. I think that is what Executive order 11491 intended to accomplish in section 7(e), but it just hasn't worked. It especially hasn't worked since the recent decision of the Council in the so-called *Social Security Administration* case that said that the refusal of a department to obey section 7(e) was not an unfair labor practice which the Council would take any cognizance of. That just reads the section right out of the Executive order. It is a complete dead letter now.

We hope this committee will be more attentive to our interests.

[The prepared statement submitted by Mr. Hill follows:]

STATEMENT OF JAMES D. HILL, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF PROFESSIONAL ORGANIZATIONS

Mr. Chairman and members of the committee, we are a federation of professional societies of Federal employees, composed of the following organizations:

Air Traffic Control Association, Inc.  
Airways Engineering Society  
Association of Senior Engineers of the Naval Ship Systems Command  
Federal Plant Quarantine Inspectors' National Association  
National Association of Federal-State Employees  
National Association of Federal Veterinarians  
National Association of Government Engineers  
National Labor Relations Board Professional Association  
National Society of Professional Engineers  
Naval Civilian Administrators Association  
Navy Field Safety Association  
Organization of Professional Employees of the U.S. Department of Agriculture  
Patent Office Professional Association

In addition, the American Society of Civil Engineers has also asked us to represent their views before this Committee. Together, these groups are composed of approximately 60,000 professionals employed by the government.

Bills on the present subject have been introduced, and these hearings are being held because of the dissatisfaction with the present labor-management system in the Federal service as it now exists pursuant to Executive Order 11491. You have heard the objections of unions; for the most part we think they are valid and meritorious.

We are here to inform the Committee that there are other groups of Federal employees—Federal professional societies and associations of supervisors—that are also dissatisfied with the present system. Our complaints are different than those of the unions, but we think they are equally meritorious, and are equally deserving of this Committee's consideration. We join with the unions in urging the enactment of legislation on this subject, which will meet the legitimate needs of all groups for relief.

As the unions are quite capable of presenting their own complaints, and have done so very ably, we will not comment on those sections of the proposed bills which concern only the unions, but will limit ourselves to those which affect Federal professionals, professional societies, and supervisors.

#### I. DUES WITHHOLDING

Public Law No. 87-304 of September 21, 1961, authorized the head of each department to permit employees to make allotments from their compensation "for such purposes as the department head deems appropriate". This Act repealed various laws which permitted employees of some departments or bureaus to make allotments for various purposes, and substituted one comprehensive law covering all Federal employees of all departments, authorizing allotments for any purpose which the department head might approve.

When presenting the bill to the House, then-Chairman Murray of the House Committee on Post Office and Civil Service said:

"The legislation also consolidates the several existing laws relating to the allotment and assignment of compensation for Federal civilian employees, with their differing conditions and limitations, into one uniform and coordinated standard legislative provision which will govern procedures for such allotment and assignments to pay in the cases of all Federal civilian employees in or under the departments and agencies covered by the bill."  
(107 Cong. Rec. 12715, July 17, 1961)

And when presenting the bill to the Senate, Senator Mansfield said:

"... the legislation consolidates several existing laws and provides one standard provision applicable to all employees of the Government." (107 Cong. Rec. 19593, September 15, 1961)

Unfortunately, the "one uniform and coordinated standard" which the Congress intended has not ensued. By Section 6 of the Act, the Congress authorized the President to issue regulations to carry out the purposes of the Act. By E.O. 10982 the President delegated this authority to the Civil Service Commission, and the Commission issued regulations on the subject which may be found in 5 Code of Federal Regulations, Section 550.305. The regulations of the Civil Service Commission authorized department heads to permit employees to make allotments for specified purposes, including the payment of dues to labor organizations to which the department had accorded recognition under E.O. 10988, and forbade the department head to authorize allotments for dues to other employee organizations. In effect, the Civil Service Commission partially repealed the Act of Congress by taking away from the department head the authority which the Congress gave to him and intended him to have. It restricted the benefits of the law to one class of Federal employees, and has denied it to all others.

At least one agency head, the Administrator of the Federal Aviation Administration, wanted to extend dues withholding privileges to several professional societies of FAA employees, but the Chairman of the Civil Service Commission refused to give permission. In 1965 Chairman Lindley Beckworth of the House Subcommittee on Manpower, and Senator Monroney, Chairman of the Senate Committee on Post Office and Civil Service wrote to the Chairman of the Civil Service Commission, objecting to his arbitrary and discriminatory administration of Public Law 87-304, and after several exchanges of correspondence and telephone conversations were able to get him to amend the Civil Service Commission's regulations so that it also permitted payroll allotments for dues of professional societies. A number of our member associations, in several departments, then availed themselves of the privilege of having payments of dues by payroll deduction.

This situation continued until June 30, 1971, when the Commission again reversed itself and amended its regulations to again provide for dues withholding in favor of Federal labor unions, but not in favor of Federal professional societies or other employee organizations. That situation has continued to the present time. Section 21 of Executive Order 11491 authorizes the allotment of dues in favor of a labor organization or an association of supervisors, but not in favor of Federal professional societies. While some of our organizations have some dues withholding privileges because of their status with their agency as an association of supervisors, the agency will deduct dues only for those members of the employee association whom it regards as supervisors, and not for other professionals who belong to the association.

The present regulations of the Civil Service Commission with respect to payroll allotment authorize its use for the purchase of United States savings bonds,

contributions to charity drives, the payment of state income taxes, allotments to the families of overseas employees, allotments for bank savings, for premiums on commercial or government life or health insurance and so forth. These are all worthy purposes.

The present provision of the Commission's regulations authorizing an allotment for dues to government labor unions is equally worthy. We fully support Section 7108 of H.R. 10700 which would continue the payroll allotment privileges of labor union members. The government unions perform a useful service for their members which is aided by the convenience of a dues check-off. We complain only of the refusal of the Civil Service Commission to permit the same benefit to other associations of government employees, which also perform a useful service to their members, and also to their respective agencies.

Our attempts to get the Civil Service Commission to continue dues withholding privileges for Federal professional societies have been completely unavailing, and is one of the principal reasons why we urge that Executive Order 11491 be replaced by legislation. To that end, we propose an amendment to Section 7108 which would also authorize allotments for dues to other associations of Federal employees. It is attached to this statement, as Attachment "A" and we solicit the Committee's favorable and sympathetic consideration of it.

In our opinion the Civil Service Commission and the Federal Labor Relations Council are deliberately flouting the intent of Congress as expressed in Public Law 87-304. It did not intend any such discrimination between groups of Federal employees or any special preferences to the members of Federal labor unions. Indeed, Public Law 87-304 was enacted before President Kennedy originally issued Executive Order 10988 and so could not have intended that the privilege of payroll allotment for dues to employee associations to be extended to some employees, but not to others for the same purpose.

## II. RELATIONS BETWEEN AGENCY AND PROFESSIONAL SOCIETIES.

Section 7106(1) (3) of H.R. 10700 (p. 18 of the print of October 3, 1973) provides that exclusive recognition of a labor organization shall not:

"(3) preclude or restrict discussions with religious, social, fraternal, professional, or other lawful associations not qualified as labor organizations, with respect to matters or policies that are of particular applicability to them or their members, but such discussions shall be so limited that they do not assume the character of formal consultation on matters appropriate for collective bargaining or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees."

Ever since the original promulgation of Executive Order 10988 in 1962, it has been a part of the Federal government's labor-relations philosophy to preserve the informal discussion rights of veterans' organizations, and organizations of religious, social, fraternal and professional employees, not qualified as a labor union. While they may not engage in formal collective bargaining with respect to personnel policies and practices, and working conditions—as this function is properly reserved to the union having exclusive bargaining rights—they were intended to continue to have the right to engage in informal discussions on these subjects, insofar as they are applicable to their members.

To refer to the historical background of this governmental policy, President Kennedy first appointed a Task Force on employee-management relations in the Federal service in June 1961. The chairman of the Task Force was Secretary of Labor Goldberg, and other members were Chairman Macy of the Civil Service Commission, Director Bell of the Bureau of the Budget, Postmaster General Day, Secretary of Defense McNamara, and Mr. Sorenson, Special Counsel to the President. Subcommittees of the Task Force engaged in research, and submitted reports, on a wide variety of matters relevant to a Federal employee-management program, including an examination of the composition of the then-existing organizations of Federal employees. At that time Federal agencies engaged in dealings, in an informal manner, with the large general labor unions, and with a variety of smaller organizations, frequently organized on craft lines, and which existed for social, professional, or other reasons, in addition to their function of representing their members in dealings with their agency.

The Task Force proposed to President Kennedy that the Federal government's employee-management program be structured more on the lines of private industry; that recognition be granted to labor organizations in which manage-

ment does not participate, but that this not interfere with the traditional and valuable relationships which the Federal government had enjoyed with employee organizations not qualified as a labor union. On November 30, 1961 the Task Force wrote to President Kennedy outlining its proposals for the establishment of a Federal employee-management program, in the course of which the Task Force said:

"C. VETERANS ORGANIZATIONS

*"The recognition of employee organizations should not affect the special relationship of veterans organizations with government agencies.*

"For many years, veterans organizations have enjoyed a special relationship with government agencies. Congress has granted special rights and privileges to government employees who are veterans. Over the years, veterans organizations have been active on behalf of their members in exercising these rights and privileges. The Task Force feels that there is no conflict between such activities of veterans organizations on behalf of their members and the work of regular employee organizations. The development of more formal employee-management relations should not be permitted to inhibit, restrict or impair these valuable services of veterans organizations.

"D. RELIGIOUS AND SOCIAL ORGANIZATIONS

*"The recognition of employee organizations should not preclude limited dealings with employee groups formed for religious or social purposes.*

"Some notice must be taken of the existence among Federal employees of a considerable variety of associations which are formed primarily for purposes other than the improvement of working conditions. The Task Force feels that there should be no objection to management officials dealing with such association on matters involving individual members, or on policies having particular application to their group (e.g. work schedules on a religious holiday) even though exclusive recognition has been granted to another employee organization. As a normal practice, a representative or an employee organization with exclusive recognition has the right to be present on such occasions.

"It is to be understood, however, that such dealings shall not assume the character of formal consultation or negotiation on matters of general employee-management policy, nor shall the furtherance of the interest of one group of employees be permitted to discriminate against or injure the interests of other employees. This would plainly be contrary, e.g., to the government policy of withholding recognition from any employee organization which adheres to or practices discrimination based on race, color, creed, or national origin."

On December 5, 1961, the President issued a public statement in which he said "The Task Force has done an excellent job in a difficult and complicated field. . . . I have directed that an Executive Order giving effect to the Task Force recommendations be prepared for issuance by the end of the year."

Executive Order 10988 was signed by President Kennedy on January 17, 1962. Section 3(c)(3) of the Executive Order provided:

"(c) Recognition, in whatever form accorded, shall not. . . .

"(3) preclude an agency from consulting or dealing with any religious, social, fraternal or other lawful association, not qualified as an employee organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members, when such consultations or dealings are duly limited so as not to assume the character of formal consultation on matters of general employee-management policy or to extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees."

Section 12 of Executive Order 10988 delegated to the Civil Service Commission responsibility for administration of the Order, for the development of a program for the guidance of agencies under the Order, for the providing of technical advice to agencies, and the training of agency personnel and management officials in the discharge of their responsibilities under the Order. On April 24, 1962, the Commission issued FPM Letter No. 700-1 entitled "Executive Order 10988. A Sectional Analysis with Suggested Guidelines to Assist Agency Implementation of the Order". In describing Section 3 the Commission said:

"The introduction of the employee-management cooperation program should in no sense be viewed as an effort to deemphasize the importance of the individual or to dilute existing programs designed to meet his needs and protect his rights. This would not be desirable in any event in view of the Government's traditional concern for effective personnel management, the requirements of the merit system, and the policy of strict neutrality with respect to the decision of employees to join or not join an organization. For example, even where there is exclusive recognition, any individual employee has the right to choose his own representative in a grievance action.

"Congress has granted special rights and privileges to Government employees who are veterans, and, over the years, veterans organizations have been active on behalf of their members in exercising these rights and privileges. *The development of more formal employee-management relations should not be permitted to inhibit, restrict, or impair these services of veterans organizations with respect to matters of particular concern to their membership.*

"Similarly the program for employee-management cooperation does not affect the right of employees to form or join other lawful groups such as religious, social, and fraternal organizations which do not meet the conditions for recognition or to present the views of these groups to management. *Although these groups may not be given recognition under the Order, management is free to deal with them in areas in which they have particular interests.* However, such dealings may not cover matters outside the special concerns of these groups. Such dealings also are not appropriate if they result in discrimination against or injury to the interests of other employees." (Emphasis added).

In August 1962, the Commission issued a publication entitled "Employee-Management Cooperation in the Federal Service—Basic Training Material" which was described as "material intended for management training . . ." In this publication the Commission instructed agency management:

"C. *Relationship with other organizations and special groups.*

"The program for employee-management cooperation does not affect the right of employees to form or join lawful groups which do not meet the conditions for recognition or to present the views of these groups to management. There are many social, religious, and other groups with Federal chapters and management is free to deal with these groups in areas of interest to them, but such dealings may not extend to matters outside the special concerns of these groups. They may not be given recognition under Executive Order 10988."

This section of the Executive Order, and the foregoing interpretations of it, continued until Executive Order 10988 was replaced by Executive Order 11491, effective January 1, 1970. Section 3(e)(3) was carried over into Executive Order 11491, as Section 7(d)(3) in substantially verbatim form. There has been no change in it, except that, by Executive Order No. 11616, August 26, 1971, the section was amended by addition of the word "professional". At that time the Federal Labor Relations Council issued a "Report and Recommendations", explaining the changes which had been made, in which it said:

"The Council conducted an intensive study and held 18 executive sessions to discuss major policy issues directly related to the Order. There were several of these issued on which, after due consideration, the Council concluded that revision of the Order is necessary at this time. Our recommendations on these matters are discussed below. . . .

"A. REPRESENTATION

(1) *Section 7(d)(3) should be amended by adding "professional" to the types of lawful association, not qualified as labor organizations, with which an agency may have limited dealings not inconsistent with the rights of recognized labor organizations. . . .*

"In some instances, agencies may be overly fearful of violating the rights of recognized labor organizations and unnecessarily refrain from proper dealings with professional associations on purely professional matters. To maintain such communications and to avoid further misunderstandings, we recommend that 'professional' be explicitly included among the types of associations listed in section 7(d)(3) with which an agency may have limited dealings not inconsistent with the rights of recognized labor organizations. . . ."

Thus, the Government's philosophy in this field has been uniform since the inception of the Government's labor relations program in 1962. Veterans organizations, professional societies, and similar employee groups not organized as labor unions, perform useful services for their members—and in many instances for their agency—and their existence and right to communicate with their agencies should be preserved. The difficulty has been that the formulation of the governmental philosophy expressed in the Executive Orders has been so weak that its purpose has been frustrated. H.R. 10700 continues this ineffective formulation of words, almost *in haec verba*.

Our difficulties on this subject are two-fold:

1. The language does not *require* agencies to deal with non-union employee groups; it merely provides that they may. In some agencies management has taken advantage of this by flatly refusing to talk to professional societies of their employees. It certainly will not come as news to this Committee to hear that some agencies are anti-employee, and refuse, frustrate and delay all attempts at union recognition and collective bargaining. If this attitude did not exist, the present demand for an effective labor relations law would not exist. In such agencies management uses the permissive language of the present Section 7(d)(3) of Executive Order 11491 as an excuse to have no dealings with professional societies and other employee groups. Other agencies claim that they are under union pressure to refuse to talk to anyone other than the exclusive bargaining representative, even though it is obviously the intention of the Executive Order to expressly permit this. In still other instances, agency managers deliberately misunderstand the language of the section and claim that it forbids even informal discussions on any subject that could be the subject of collective bargaining.

2. The second problem in the language presently used in Section 7(d)(3) of Executive Order 11491, and which is repeated almost verbatim in Section 7106(1)(3) of H.R. 10700, is alluded to above. Both provisions provide that discussions with agencies "shall be so limited that they do not assume the character of formal consultation on matters" appropriate for collective bargaining. This is the language which is used by recalcitrant agency management to refuse to have any informal discussions of any kind with professional societies or their employees. We cannot conceive of any subject of discussion between an agency and any member of the public, or group of members of the public, which could not in some manner affect the working conditions of employees, and thus be an appropriate matter for collective bargaining. This is even more true with discussions between an agency and lawful associations of its employees.

If a religious organization wished to discuss the agency's practice with respect to religious holidays, or a veterans organization wished to discuss the agency's veterans preference hiring practices, or the Federal Bar Association wished to discuss the treatment of attorneys and hearing examiners, this could obviously affect the working conditions of some employees. This is what the government's labor relations program has always intended, but this is not the way many agencies construe the present Executive Order. The limitation which was intended to be imposed on such discussions is not with respect to the subject matter of the discussions, but with respect to the type of discussion.

Associations not qualified as a union are intended to be able to discuss matters affecting their members, but they may not engage in formal collective bargaining about it. This is reserved for unions. If a Federal professional society wishes to engage in collective bargaining about matters of personnel policy or practice, or working conditions, it should qualify as a union. Three of the professional associations that are members of our federation have done so. The rest of our members prefer to pursue the aims and goals of professional societies, and to limit their discussions with agencies to consultation falling short of collective bargaining.

To meet this problem we suggest that the words "formal consultation" on line 11 of page 18 of the bill be changed to "negotiations". Our experience has been that agency managers either do not know what "formal consultation" means, or use it as an excuse not to have any consultation at all. The word "negotiations" has a clear meaning in the bill; it is what a labor organization having exclusive recognition is entitled to engage in, under Section 7107. The same term should be used to define what other associations should not do.

We have presented a proposed redraft of Section 71(1), which will meet the above problems, and we attach it to this statement as Attachment "B".

Other bills before the Committee are even less favorable to employee associations that are not unions. H.R. 13 provides that they may not speak to anyone at all, even informally, about matters appropriate for collective bargaining. In H.R.

9784 we cannot find any provision permitting agencies to continue to have any discussions of any kind with employee groups that are not unions, on any subject.

### III. THE INCLUSION OF PROFESSIONALS IN COLLECTIVE BARGAINING UNITS

Executive Order 11491 provides that a unit shall not be recognized for collective bargaining purposes, if it includes "(4) both professional and non-professional employees, unless a majority of the professional employees vote for inclusion of a unit." Section 10(b) (4). There are no provisions for the consent of non-professional employees to such a combined unit, nor is there any provision for the later decombining, or exclusion of professionals, if they should later determine that they do not wish to be in the unit. Section 7106(h) (6) of H.R. 10700 is to the same effect, and has the same defects.

Professionals have their disputes with management, just as non-professionals do, but they are frequently different disputes. Their purposes would often be better served if they were in a separate bargaining unit of their own, rather than combined in one unit with clerks, blue-collar workers, and other non-professionals. The present Executive Order permits the establishment of a unit on a "plant or installation" basis, which would include everyone in a plant or installation, even though the different classes and crafts of employees may have no community of interest in their disputes with management. H.R. 10700 repeats these words in Section 7106(g).

Unfortunately, the average Federal employee is not sophisticated concerning labor law. We have heard many complaints that a notice of election of a collective bargaining representative was posted, but professional employees did not realize that they had a right to separately elect to be included or excluded. Once they are included, sometimes almost by default, they may never vote to be excluded. The present Executive Order is a one-way street. We have heard professional groups complain to the Federal Labor Relations Council about this repeatedly, but the Council has done nothing about it.

This Committee should act on this long-standing complaint. For this purpose we suggest two changes: First, that Section 7106(h) (6) of H.R. 10700 which now provides that a unit shall not be established if it includes "(6) both professional and non-professional employees, unless a majority of the professional employees vote for inclusion in the unit", be deleted and there be substituted for it the language contained in H.R. 9784, Section 6(f) (3) (p. 24) which reads as follows:

"(3) a unit including both professional and non-professionals shall not be appropriate unless a majority of the employees in each category indicate by vote or other credible evidence that they desire to be included in such unit; and"

Second, that Section 7106(c), on pages 13-14 of the print of October 3, 1973 which states the circumstances in which an election may be held to determine a collective bargaining representative, or the termination of representation, be changed by adding to it a provision that such an election may be held when a majority of professional employees in a combined unit no longer wish to be included in the unit. We attach a proposed amendment to Section 7106(c) to give effect to this change. It is attached hereto as Attachment "C", and we solicit the Committee's favorable consideration.

### IV. THE DEFINITION OF A PROFESSIONAL

The present Executive Order 11491, as stated above, provides that professional employees may vote not to be in a unit together with non-professionals. Section 7106(h) (6) of H.R. 10700 repeats this language. Executive Order 11491 does not define who is a "professional", but this was added by a decision of the Assistant Secretary of Labor, dated June 26, 1972, known as the *Department of Interior, Riverside* case, decision No. 170. In that case the National Federation of Federal Employees (NFFE) sought an election of all non-professional employees in the Riverside District and Land Office, Bureau of Land Management.

The parties stipulated that Range Conservationists and Wildlife Management Specialists were professionals, as they were expected to have a college degree with at least 30 hours of major study in biology, plus additional on-the-job training. The parties were in dispute whether Realty Specialists, Outdoor Recreation Planners and Appraisers were professional because, although the activity hired only those with an academic degree, this was not required by Civil Service Commission standards. The Assistant Secretary held that all five categories were not professionals. He adopted verbatim the very restrictive definition con-

tained in the National Labor Relations Act which requires a post-graduate college degree, as distinguished from "a general academic education".

The Department of Interior attempted to appeal the decision to the Federal Labor Relations Council, but its appellate jurisdiction is of the permissive, certiorari, type, and the Council denied the Department's Petition for Review. In its Petition for Review, the Interior Department pointed out that the NLRA definition will exclude all government professionals except a "small portion . . . dominated by law, medicine and engineering", and that there had been no hearing whatever as to Range Conservationists and Wildlife Management Specialists. On this subject, the Department's Petition for Review said:

"There was no opportunity to present a prehearing brief, no opportunity for reasonable preparation in advance, no opportunity to develop exhibits or prepare testimony or arguments, no opportunity to call or offer witnesses, there was no prior knowledge that the question was even at issue. See Exhibit 2. This does not constitute due process in our view. This is disservice to the principles of impartiality, order, due process, full and fair day in court."

The Federal Labor Relations Council was unmoved by this. In effect it engaged in a rulemaking proceeding of major importance, affecting hundreds of thousands of Federal employees who have always regarded themselves as professionals, without giving affected persons a right to comment, as provided by the Administrative Procedure Act. It decided this important issue in a single isolated case, unknown to the affected public, and then refused to review the decision, or to remand it so that a hearing might be had. The Assistant Secretary has since applied the same definition to hold that Historians, Librarians, and Operations Research Analysts are not professionals. U.S. Army, Safeguard Systems Command, Assistant Secretary's decision No. 224, December 4, 1972.

Unfortunately, H.R. 10700, in Section 7103(a) (13) adopts the identical definition, taken verbatim from the National Labor Relations Act. There are many specialties in today's society that have marked intellectual content, and are manned by persons who have a specialized education acquired in an institution of higher learning, or its equivalent, a diploma or certificate based on examinations, who adhere to a code of ethics, and that are formed into learned societies that utilize some form of accreditation for its members. But, under the present definition taken from the private sector, they are not professionals.

Several years ago the Job Evaluation and Pay Review Task Force—known as the Oliver Task Force—recommended to Congress a revised job-evaluation grouping for Federal employees, broken down into six classifications, one of which was professional employees. The Task Force estimated that there were approximately 600,000 non-supervisory employees in the Federal government in such positions. In the course of this, in July 1970, the Task Force prepared a position paper defining professionals and their unique role in the Federal service. We quote pertinent portions of it:

#### "PROFESSIONS IN THE FEDERAL GOVERNMENT

"This paper describes the professions and their place in American society today; it points out some of the changes professions are now undergoing; it describes how they are becoming increasingly important in governmental processes; and it suggests a course of action for the Federal Government with respect to the classification and pay of its professionals.

#### "PROFESSIONS TODAY

"The professions have always been recognized as being the bridges between knowledge and power: the occupations through which knowledge and learning are put to service in society. The role of the profession is a central one in all industrial societies; and this role becomes increasingly important as industrialization advances. As William J. Goode has put it, 'an industrializing society is a professionalizing society.' An increasing complex division of labor and specialization of occupational function is not only induced by industrialization, it also appears to be required by it. (Howard M. Vollmer and Donald L. Mills, Professionalism, (New York: Prentice Hall, 1966), p. 46.)

"Thus, in 1900 the largest single group of the American people was rural and made a living on the farm. By 1940, the largest single group by far was that of the industrial worker, typified by the machine operator. In 1960, the largest single group was composed of professional, managerial and tech-



nical people, that is, knowledge workers: people who work with ideas, concepts and information rather than manual skill or muscle. Yet a century ago an educated man could make a living through knowledge only in a few professions—there were no other knowledge occupations. By 1980 at the latest, Peter Drucker predicts, this group of knowledge workers will embrace the majority of Americans at work in the civilian labor force. Where the professions were once the only full-time knowledge occupations, they are now the elite group of a vast and growing number of knowledge occupations. (Peter F. Drucker, *The Age of Discontinuity*, (New York: Harper & Row, 1969), p. 264.)

"Now, Everett C. Hughes states 'Professions are more numerous than ever before. Professional people are a larger proportion of the labor force. The professional attitude, or mood, is likewise more widespread; professional status, more sought after. These are components of the professional trend, a phenomenon of all the highly industrial and urban societies; a trend that apparently accompanies industrialization and urbanization irrespective of political ideologies and systems.' (Everett C. Hughes, 'Professions,' *Daedalus*, Fall 1963, p. 655.)

"And Kenneth S. Lynn says: 'Everywhere in American life, the professions are triumphant. As Clark Kerr has pointed out, we already devote an impressive percentage of the gross national product to the training of professionals, and he predicts that the day is coming when the knowledge industry will occupy the same key role in the American economy that the railroad industry did a hundred years ago.' Lynn points out that during the 'fifteen year period (1955-1970) in which we are attempting to double the number of our high school teachers and triple the number of college professors—an awesome task which is made even more difficult by the simultaneous and equally grandiose expansion plans of all the other traditional professions, the spectacular proliferation of new professions and the increasing professionalization of business life—America has become more cognizant of the professions, and more dependent upon their services, than at any previous time in our history. Thorstein Veblen's sixty-year-old dream of a professionally-run society has never been closer to realization.' (Kenneth S. Lynn, 'Introduction,' *Daedalus*, Fall 1963, p. 549.

#### "WHAT ARE PROFESSIONS?"

"The term professions may be used to mean two things: a particular category of occupations or the people who practice in that particular category of occupations. Professional may similarly mean the attributes of such occupations or of the people performing that kind of work; professionalization may be taken to mean the process by which an occupation becomes a profession or its members become more professional.

"The sets of criteria by which professions are to be distinguished from other occupations are almost as numerous as writers on the subject." (Quoting a variety of definitions.)

"To summarize: A profession is a full-time occupational specialization having a marked intellectual content and requiring prolonged education for its practice; it requires of its members a personal commitment to a career and way of life and a commitment (formalized in a code of ethics) both to the client whose needs are served, and to the society of which it is a part; it employs some kinds of tests to determine its membership and utilizes some forms of accreditation for those members; it exercises occupational self-control recognized by the public and by its clients; it utilizes formal occupational associations to further its aims; it is dedicated to occupational advancement through research and the dissemination of knowledge about and within the occupation through occupational publications.

"This description of a profession might serve as one extreme of a continuum of occupations ranging from laboring to crafts and technical trades, into the knowledge occupations and on to the professions, and culminating in the most fully professionalized occupations. Each individual profession falls into place somewhere along the continuum between the lowest knowledge occupation, whose only professional characteristic is that it applies information gained through education, to such fully developed professions as medicine and law. The lowest limit for major professions along the continuum might be a recognized occupation requiring the equivalent of a bachelor's degree and offering a lifetime career to its members. Minor

and auxiliary professions, requiring less than a bachelor's degree, would fall just below them. These two groupings would include not only established professions but many emerging professions which are still moving toward full professional status.

#### "CHANGING PROFESSIONS

"Harold L. Wilensky ('The Professionalization of Everyone', *American Journal of Sociology*, LXX (September 1949), 143 (as noted there are seven key milestones in the process of professionalization of an occupation. The first milestone is reached when the occupation becomes a full-time one; the second milestone is the establishment of the first training school for the occupation; the third is marked by the establishment of the first university school for the occupation; the fourth is the establishment of the first local professional association; the fifth is marked by the establishment of the first national professional association; the sixth is reached when the occupation obtains its first state licensing law; and the final milestone is reached with the establishment of a formal code of ethics. For the traditional professions to traverse the seven milestones took centuries in the past. Now, new professions emerge from nonprofessional occupations and as specializations from the traditional professions in decades or less. The rapid change of pace in our society reflects itself in the rapidity with which new professions now emerge.

"The nature of a profession has always reflected and reacted to the structure and needs of the society in which it practiced. As western societies have evolved from preindustrial or lightly industrial societies to predominantly industrial ones and thence to the post-industrial, knowledge-centered, service-centered society characteristic of the United States today, the structure and work relationships of the professions have always changed accordingly. Although some professions have always operated in an organizational matrix, for example, the clergy and the civil service, the predominant relationship in the past was that of an independent professional and an individual client. In the industrial and knowledge-centered society of the 1960s and 1970s, the dominant pattern has become that of operation within an organizational environment. In increasing proportions, professionals find themselves working as salaried employees in Government, industry, research centers and foundations as the key, and sometimes major, group within the organizations.

#### "PROFESSIONS IN THE PUBLIC SERVICE

"Frederick C. Mosher points out that American governments (Federal, state and local) are the principal employers of professionals. According to the 1960 census, 36% of all the 'professionals, technical, and kindred' workers in the United States were employed by governments. 'Looked at another way, about one-third of all government employees were engaged in professional and technical pursuits. This was more than three times the comparable proportion in the private sector.' (*Democracy and the Public Service* (New York: Oxford University Press, 1968), p. 103). He states that in most of the professionalized agencies of government (and this includes the most important ones) the managers are professionals in the specialized occupational fields of their agencies; most of those designated as staff are also professionals but typically in fields of specialization different from the management; many of the workers—and most of those in middle management positions—are also professional, usually in the same professions as management. A result, says Mosher, is that the professional composition of public agencies has substantially revolutionized the precepts and practices of public employment. Most importantly, what has happened is 'a delegation of real personnel authority, formal and/or informal, from a central personnel office or Civil Service Commission to the professions and the professionals themselves. A basic drive of every profession, established or emerging, is self-government in deciding policies, criteria, and standards for employment and advancement, and in deciding individual personnel matters. The underlying argument for such professional hegemony is that no one outside—no amateur—is equipped to judge or even to understand the true content of the profession or the ingredients of merit in its practice. The argument is difficult to challenge, particularly in highly developed, specialized, and scientific fields with which an amateur—or a professional in personnel administration—can have only a passing acquaintance.'

"Mosher concludes 'For better or worse—or better and worse—much of our government is now in the hands of professionals (including scientists). The choice of these professionals, the determination of their skills, and the content of their work are now principally determined, not by general governmental agencies, but by their own professional elites, professional organizations, and the institutions and faculties of higher education. It is unlikely that the trend toward professionalism in or outside of government will soon be reversed or even slowed.' "

The conclusions to be drawn from this are, that at the present there are 600,000 or more professionals in the Federal work force, the Federal government utilizes professionals in many specialties unknown to private industry, already they have revolutionized public employment, as our society becomes increasingly technological and scientific they will have increasing importance to society and to the government. As employees of the government they too have their disputes with management. A labor-management system that attempts to deny their existence or importance, or to reject their legitimate needs, by artificial and restrictive definitions drawn from the 18th Century, as the present administrative system under Executive Order 11491 does, is simply divorced from reality. A definition of the term "professional" that is more attuned to the present facts of life in the government is needed. To that end we recommend that H.R. 10700 strike the definition taken from the National Labor Relations Act and now contained in Section 7103(a) (13) of the bill and adopt, instead, the more liberal definition utilized in H.R. 9784, Section 3(g) which reads:

"(g) The term 'professional' includes any employee whose work—

"(1) is predominantly intellectual and varied in character;

"(2) requires the consistent exercise of independent judgment;

"(3) requires knowledge of an advanced nature in a field of learning customarily acquired by specialized study in an institution of higher education or its equivalent; and

"(4) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time."

#### V. THE STATUS OF SUPERVISORS

Executive Order 11491 does not permit management officials or supervisors, down to the lowest possible level, to be represented by labor unions, or to be active in unions. They may not be in a unit recognized for collective bargaining purposes. Section 10(b)(1). The definition of a supervisor contained in the Executive Order is taken verbatim from the National Labor Relations Act. It is repeated, verbatim, in Section 7103(a) (8) of H.R. 10700. We think that the definition is much too severe for the Federal service. In the Federal service most supervisors are not truly a part of management. They do not have realistic authority to hire or fire, or take other management action. They are employees, who have disputes with management just as non-supervisory employees do. When President Kennedy first issued Executive Order 10988 in 1962, the Department of Labor retained Professor Sterling Spero of New York University as a consultant on the Department's labor relations under the new Order. On the subject of the exclusion of supervisors from collective bargaining units, Professor Spero said:

"The government white collar services are sui generis when it comes to distinguishing between supervisor and staff . . . The fact is that demarcation between rank and file (and) supervisor is blurred by the very nature of the civil service classification system. Titles or grades tell little . . . Those in the higher classifications need more assistance and therefore have larger staffs, but the top man is not necessarily a 'supervisor' in the sense that he is a part of 'management' . . . It is true that higher ranking personnel recommend the rating of their assistants, but they do not make final ratings. Nor do they realistically hire or fire. Unless they do this they are not in my opinion supervisors in the managerial sense or under the terms of the Executive Order.

"The test of the managerial employee is authority to determine administrative policy, realistic power to rate, hire and fire employees. Personnel officers and their staffs privy to policy and, perhaps, administrative and fiscal officers are also organs of management. Answers to your questions also attempt to distinguish between the roles of true managerial officials and supervisory employees who do not really exercise managerial authority. Your consultant finds that such employees by long membership in Lodge 12

have demonstrated a common interest with the rest of the membership and should on this ground continue to be included in the bargaining unit." The 1963 Annual Report of the Section on Labor Relations Law, American Bar Association, reported on Executive Order 10988 and in the course of it said:

"A definition of conflict of interest which excludes *all* supervisors confers upon many levels of supervision an aura of managerial responsibility which simply does not exist in the Federal scheme of things."

We therefore suggest to the Committee that the proposed plan of the bill which would exclude all supervisors, down to the lowest level, from activity in a union or from representation in a unit, is too severe and should be modified. The bill now excludes management officials from collective bargaining units (Section 7106(b)(1)), and from participation in the management of a labor organization (Section 7103(b)(2)). This should be sufficient. If a supervisor's duties do not rise to the definition of a management official, he should not be barred from the benefits of unionization.

As stated above, supervisors have disputes with management just as non-supervisory employees do, and have need to engage in collective bargaining on matters of personnel policies and practices and working conditions. In order to provide some relief for supervisors, who are completely barred from membership in collective bargaining units under Executive Order 11491, the Executive Order provides a substitute, contained in Section 7(e) of the Order reading as follows:

"(e) An agency shall establish a system of intramanagement communication and consultation with its supervisors or associations of supervisors. These communications and consultations shall have as their purposes the improvement of agency operations, the improvement of working conditions of supervisors, the exchange of information, the improvement of managerial effectiveness, and the establishment of policies that best serve the public interest in accomplishing the mission of the agency."

Unfortunately, this has not worked. The system so established does not provide for the right to engage in collective bargaining, nor to reach negotiated agreements resolving problems, as units of non-supervisory employees have. Further, in a recent decision known as the *Social Security Administration* case, FLRC No. 73A-17, the Federal Labor Relations Council held that the refusal of an agency to comply with the limited obligations placed on it by Section 7(e) of the Executive Order is not an unfair labor practice, and that the Council will take no action on a complaint filed by an association of supervisors. Before that decision, Section 7(e) was a poor substitute for collective bargaining; now it is a dead letter.

Even before this decision some agencies contended that a professional society might not qualify under Section 7(e) if it had any non-supervisory members, or that if recognized under Section 7(e) the association could discuss only such personnel problems as are applicable exclusively to supervisory employees, or that only the supervisory members of an association might have dues withholding privileges.

We respectfully represent to the Committee that any Federal employee who is not truly a part of management ought not to be excluded from the benefits of union representation. At recent hearings which were held by the Federal Labor Relations Council to consider requests for improvements in Executive Order 11491 almost every union that testified, and also some department personnel representatives urged that the present rule against the inclusion of supervisors in units be either abolished or modified. There has been similar testimony before this Committee. We suggest that there are three ways of accomplishing this worthwhile purpose.

"(a) Eliminate all reference to supervisors in the bill. Eliminate the definition of a supervisor in Section 7103(a)(8); the provision of Section 7103(b)(2) that a supervisor may not participate in the management of a labor organization, and the provision of Section 7106(h)(1) that a unit may not be established if it includes supervisors. This would bar only persons who are truly management officials, and would permit supervisors to be included within collective bargaining units together with non-supervisors and to be active in their union. This may create some conflicts of interests between supervisors and non-supervisors in the same units, as their interests on collective bargaining issues may differ on some points, and might cause them to be swallowed up by the interests of non-supervisors who

Labor Relations Council this was the solution that the unions seemed to want.

"(b) Amend the bill so as to enable supervisors to organize as unions, but in separate units from non-supervisors, represented by different unions, as some state laws now provide.

"(c) Give supervisors a separate vote, as professionals now have, on whether they want to be included in a unit with non-supervisors, or in units of their own."

We have no preference between these two solutions, but we strongly urge the Committee to amend H.R. 10700 to include one of them.

#### VI. ANTI-PROFESSIONAL PROVISIONS IN THE BILL

There are two sections in the bill which do not appear to have any purpose except to disqualify professional associations and small craft guilds from obtaining union recognition. We respectfully urge that any language having such effect should be corrected.

First, we believe that Section 7103(a)(4)(A), page 5, lines 10-13, should be stricken from the bill. This subsection in effect would prohibit any professional or fraternal society from ever becoming a labor union. Many such societies have become labor unions in the past, not only in the private sector, but in the government as well. This Committee has already heard from the National Treasury Employees Union and the Professional Air Traffic Controllers Organization, and this morning will hear from the National Association of Air Traffic Specialists. All three of these organizations are very good labor unions, that commenced their careers as Federal professional societies. Additional examples are the NLRB Professional Association, the Federal Plant Quarantine Inspectors' National Association, the Patent Office Professional Association and the American Foreign Service Association. We think that any association of Federal employees should be permitted to convert into a labor union if it wishes to do so.

Also we suggest that Section 7106(g) (page 15-16) be amended by adding the word "craft". This section provides that a unit may be established "on an agency, plant, installation, functional, or other basis . . ." This language is taken almost verbatim from Section 10(b) of Executive Order 11491, except that it eliminates the word "craft". The only purpose of this appears to be to eliminate the small craft guild from qualification as a labor union, thus giving a monopoly to the presently existing large, overall multi-purpose unions. Many employees prefer to be represented by a small union composed only of members of their own particular craft or profession, and which devotes all of its time and energies to representing this one group. This is also true in the private sector. Section 9(b) of the Labor-Management Relations Act of 1947 provides that an appropriate unit may be "the employer unit, craft unit, plant unit, or subdivision thereof. . . ."

We see no reason why Federal employees should not continue to have the same right which they had under Executive Order 11491, and which employees in the private sector have, to be represented by a small union of their own class or craft or profession. In the private sector there are many examples of such small unions, that do an excellent job of representing their members, such as the air line pilots, marine engineers, musicians, firefighters, teachers, carpenters, plasterers, the various railroad craft brotherhoods, etc.

Indeed, in the private sector most unions are craft unions. It is also true of many Federal unions, such as the Professional Air Traffic Controllers Organization, the National Association of Flight Service Specialists and the American Foreign Service Association. It has been our experience that many Federal employees prefer to be represented by a small craft guild that devoted all of its time and attention to the problem of their one class or craft, than by a large union which attempts to represent all different craft, but has expertise in the problems of none. We respectfully urge that the word "craft" be reinserted in Section 7106(g).

#### VII. JUDICIAL REVIEW.

We suggest that decisions of the proposed Federal Labor Relations Authority, with respect to the certification of majority unions, decisions on unfair labor practice charges, grievance appeals and so forth should be subject to judicial review in a Federal court, preferably by petition for review to a U.S. Court of Appeals, as is now provided by Section 10(f) of the Labor-Management Relations Act of 1947. Administrative agencies that are not subject to judicial review can easily become arrogant and oppressive.

One of the difficulties with the present system of Federal labor-management relations by Executive Order is that the United States Court of Appeals for the District of Columbia Circuit has held that it is simply a formulation of Presidential policy for the guidance of Federal agencies, having no foundation in Congressional action, and is therefore not subject to judicial review. *Manhattan-Bronx Postal Union v. Gronouski*, 350 F.2nd 451, 121 App. D.C. 321 (1965). As a result, Federal employees who believe themselves aggrieved by decisions of the Assistant Secretary of Labor, or the Federal Labor Relations Council, have no avenue of judicial review. This should be provided by the proposed legislation.

We greatly appreciate the opportunity to express our views on this important subject.

ATTACHMENT A

"§ 7108. Allotments to representatives

"(a) Where, pursuant to an agreement negotiated [in accordance with the provisions of this subchapter,] *between an agency and a labor organization or association of employees*, an agency has received from an employee in a unit or association a written assignment which authorizes the agency to deduct from the wages of such employee money in the payment of regular and periodic dues of a labor organization having exclusive recognition in such unit, or of an employee association such assignment shall be honored. The allotments shall be made at no cost to the labor organization or to the employee. Except as required under subsection (b) of this section, any such assignment shall be irrevocable for a period of 1 year.

"(b) An allotment for the deduction of [labor organization] dues terminates when—

"(1) the agreement between the agency and the labor organization or employee association is terminated or ceases to be applicable to the employee; or

"(2) the employee has been suspended or expelled from the labor organization or association.

"(c) Nothing in any agreement negotiated under this subchapter shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization, except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions."

ATTACHMENT B

"Section 7106

"(1) Despite exclusive recognition of a labor organization, in whatever form accorded pursuant to the provisions of this section. [shall not]

"(1) [preclude] any employee, regardless of his membership or non-membership in any labor organization, [from bringing] *may bring* a grievance to the attention of appropriate agency officials, or [choosing] *choose* his own representative in a grievance or appeal action;

"(2) [preclude or restrict discussions] *agencies shall establish and publish procedures for communication and consultation* between [an] the agency and a veterans' organization with respect to matters of particular interest to employees with veterans' preference; or

"(3) [preclude or restrict discussions] *agencies shall establish and publish procedures for communication and consultation* with religious, social, fraternal, professional, or other lawful associations not qualified as labor organizations, with respect to matters or policies that are of particular applicability to them or their members, but such discussions shall be so limited that they do not assume the character or [formal consultations,] *negotiations* on matters [appropriate for] *subject to* collective bargaining under this Act or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees."

ATTACHMENT C

"Section 7106(c)

"(c) Whenever a petition has been filed with the Authority—

"(1) by any person alleging that 30 per centum of the employees in an appropriate unit (A) wish to be represented for collective bargaining by an exclusive representative, or (B) allege that the exclusive representative

is no longer the representative of the majority of employees in the unit *or allege that a majority of the professional employees no longer wish to be included in the unit;*

"(2) by any person seeking clarification of, or an amendment to, an existing certification;  
the Authority shall investigate such petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. Except as provided under subsection (f) of this section, if the Authority finds upon the record of such hearing that such a question of representation exists, it shall conduct an election by secret ballot and shall certify the results thereof. An election shall not be conducted in any bargaining unit or in any subdivision thereof within which, in the preceding 12-month period, a valid election has been held."

Mr. HILL. Now if the Chairman please, I would like to refer to the other three members of our group who have independent statements to make. I believe the first one was Mr. Hughes.

**STATEMENT OF WILLIAM G. HUGHES, GENERAL COUNSEL,  
NATIONAL ASSOCIATION OF FEDERAL VETERINARIANS**

Mr. HUGHES. I am William G. Hughes. I represent the National Association of Federal Veterinarians as its general counsel.

The National Association of Federal Veterinarians was organized in 1918 and since then has been the spokesman for the federally-employed veterinarian.

Membership now approaches 1,700, and includes over two-thirds of the federally-employed civilian veterinarians. We believe that we have much in common with other Federal employees, particularly professionals and those classified as supervisors.

It is with this point we wish to supplement the testimony given by Mr. Hill.

Under the current definition, the overwhelming percentage of our members are considered to be supervisors, largely because of their professional positions.

So while NAFV is frequently thought of as being a professional association, it is currently operating under paragraph 7(e) of the Executive order as an association of supervisors and managers.

The primary purpose of the association is the betterment of the conditions of employment for veterinarians and other matters affecting their relations as Federal employees.

We now have an official consultative relationship with both the Food and Drug Administration and the United States Department of Agriculture. Dealing with agents of employing agencies under this consultative relationship, however, has proven inadequate and we strongly advocate legislation which will give Federal veterinarians and other supervisors in similar situations the rights to deal more effectively with the matters of greatest concern to all employees. The NAFV believe that the means by which it can most effectively represent Federal veterinarians is through collective bargaining.

Consultation is governed by paragraph 7(e) of the Executive order which has been held to be unenforceable. Consultation, therefore, exists at whim of the agency management and on their terms.

Usually this means that by associations such as ours are merely informed after the decisions are made with no real opportunity for meaningful interchange or true consultation.

We wish to see legislation which would not preclude supervisors

from forming collective bargaining units. This is important because the supervisor in the multitiered Federal sector is for the most part isolated from effectively dealing with matters affecting that supervisor's own employment.

The average Federal veterinarian as a Federal supervisor is not now a part of the labor-management dichotomy around which relations are based. Unions cannot now represent supervisors and management does not because it speaks for the agency and not for supervisors as employees.

Supervisors, therefore, should not be grouped with management. The average supervisor in the Government has far more in common with the rank-and-file employee than with management.

However, neither side speaks for these employees who are largely responsible for maintaining morale, making the system work effectively, and because of the nature of the Federal employment sector, actually perform a great deal of the work output.

To omit such a large segment from equitable representation is an injustice and is contrary to the policy of the Government which acknowledges the benefits to each side when collective bargaining is possible.

We do not believe that permitting supervisors to be represented by collective bargaining units will cause any severe problems.

We can foresee the creation of no conflicts of interest by permitting supervisors to so organize. There is no agency policy made by supervisors, per se.

With agents of the employer, that is, management on one side and employees on the other, a clear-cut dichotomy can be made.

The mere rating, evaluating, and assigning, within narrow limits, of other employees should not preclude participation in collective bargaining. If the delineation is made between management and employee, there will be no conflict and the result will mean that a large number of employees will be effectively represented with the benefits flowing to each side.

We do not wish to have eligibility for collective bargaining determined by the number of persons supervised. Such arbitrary numbers games caused confusion and may allow individuals in comparable positions to be classified differently and do not truly reflect responsibility.

We wish to remove all restrictions on supervisors, when they are not truly agents of the employer, from being eligible for collective-bargaining units. This may be accomplished with a definition of management official which would include all those who do make policy and who do speak for the employing agency.

Therefore, we urge this committee to report out a bill which will not continue to keep us ineffective in dealing with employee matters or one which will sound our death knell by removing what few rights we do have.

We urge you to include in any proposed legislation the right of supervisors, who are not management officials, to organize into collective-bargaining units to better serve their members and their employing agency.

Thank you for the opportunity to present testimony on this point.

Mr. HENDERSON. Thank you, Mr. Hughes.

Mr. HILL. Mr. Bradley?



**STATEMENT OF GEORGE E. BRADLEY, EXECUTIVE DIRECTOR,  
ORGANIZATION OF PROFESSIONAL EMPLOYEES OF THE U.S.  
DEPARTMENT OF AGRICULTURE**

Mr. BRADLEY. Mr. Chairman and members of the subcommittee, I am George E. Bradley, executive director for the Organization of Professional Employees for the U.S. Department of Agriculture, commonly known and referred to as OPEDA. For the past 45 years, we have worked for and represented the interests of the professional employees in USDA and in agencies transferred out of USDA, such as the Weather Bureau, Fish and Wildlife Service, Food and Drug Administration, and the Environmental Protection Agency.

We are pleased to have the opportunity to appear before this committee and to present our views on both the need for and the type of employee-management legislation we believe is needed in the Federal sector. At the outset, let us go on record as fully endorsing the enactment of employee-management legislation at this time. Twelve years of experimentation on employee-management issues under Executive orders have demonstrated that we need a law now which will establish basic rights of both employees and management and which will provide a statutory base to defend these rights.

We are also convinced that the legislation dealing with employee-management relations should be a comprehensive document which deals with the needs of all Federal employees. In the Federal sector everyone is responsible to the legislative process and will therefore be affected by employee-management legislation that establishes sound and firm national policy for Federal employees. Depending on the definition used, the Federal work force is composed of laborers, non-professionals, skilled employees, professionals, supervisors and managers. Each has a specific set of problems and needs and each should have the right to be recognized and to take the actions each deems appropriate in establishing and defending these rights.

Under present Federal procedures involving employee (labor) management relations, the place of professionals as a major component of the Federal work force has been largely ignored. This is noteworthy particularly since about 50 percent of the total classified Federal work force is made up of professionals. Depending on the definition selected, there are between 500,000 and 650,000 professionals now employed in the Federal work force. As we move forward with advanced technology and into more complex issues demanding public attention, the Federal work force of the future will require a larger percentage of professionals.

OPEDA has represented a wide spectrum of professionals, largely in one Department of Government, including, but not limited to agronomists, economists, foresters, ecologists, conservationists, agricultural production and marketing specialists, lawyers, doctors, food and nutrition specialists, veterinarians, bankers, loan and insurance specialists, scientists and researchers from all disciplines and many, many others.

Prior to the Executive order which established employee-management relations for the Federal system, our organization enjoyed extremely good and effective relationships with the Department of Agriculture and with other appropriate agencies of the executive

branch. This two-way relationship resulted largely from our organizational objectives which were to improve the quality of professional services and program delivery in the public interest. As professional who are proud of their profession and their accomplishments, we keep striving to make Federal professional services above comparison. We are dedicated to loyal, courteous, faithful, effective and a full measure of impartial and efficient service to our Government and to the public and to our associates; we seek fairness, freedom of expression, opportunity and recognition. The Executive order process has diluted our performance.

Let's now look at the problem OPEDA has encountered over the past 12 years in our attempts to be constructive in representing the professional needs of our members.

When Executive Order 10988 was issued, for the first time we were confronted with a conflict of interest. For 33 years we operated effectively without being aware that a conflict of interest could exist between professional employees and management. In our organization, both management and workers subscribed to our objectives and code of ethics. Generally, our officers were top level administrative or supervisory professionals who had worked their way up to or near the top of the career ladder. Our first officers were agency administrators, their first line deputies or their top assistants. We have always enjoyed membership from all ranks of professional workers in the Department. Under the original executive order, we were forced to either change our leaders or drop our aspirations to obtain recognition under the orders. Under Executive Order 10988, we obtained formal recognition but were forced to cancel, due to an alleged supervisor conflict of interest issue. At our next general election, we were very selective in nominating and electing nonsupervisors as officers in order that some of our chapters could obtain some degree of recognition. Under Executive Order 10988, the national organization did not seek any other type of recognition after our first formal recognition was cancelled. We did, however, obtain formal recognition for two of our field chapters—one in the south and one in the Far West.

Under Executive Order 11491, we were finally forced to seek recognition as an association of supervisors and managers. There were several features which justified this course. Fortunately 80 to 85 percent of our members could qualify as a supervisor under the definition in the Executive order. Without official recognition, we found it increasingly difficult to meet and collaborate with appropriate USDA officials. Some units with exclusive recognition in USDA included professionals. Therefore we could not develop a meaningful agreement strictly as a professional organization. Our use of bulletin boards, rental of the auditorium, use of conference rooms, use of chain mail and other privileges which we have, over the years, enjoyed in USDA were threatened. Also by Executive order edict our voluntary payroll allotment agreement would be canceled.

Section 7(e) of Executive Order 11491 contains authority to recognize supervisors and associations of supervisors and managers and provides that a system of communication and consultation with associations of supervisors "shall have as their purpose the improvement of agency operations, the improvement of working conditions of supervisors, the exchange of information, the improvement of man-

agerial effectiveness, and the establishment of policies that best serve the public interest in accomplishing the mission of the Agency." These are worthwhile statements of purpose and fit exactly the role OPEDA has tried to achieve during its entire existence. However in recent years we have found it increasingly difficult to meet these purposes.

As a professional organization, compliance with the Executive order has presented us with many serious problems. (1) We have in our membership many top quality professionals, generally scientists and specialists who rely entirely on their own capabilities to accomplish their assigned mission. They are not nor do they aspire to be supervisors. They feel that their professional organization which is now recognized as an association of supervisors or managers cannot or does not properly represent their professional interests. (2) There are no enforcement provisions in the order to resolve any differences that may be encountered between management and associations of supervisors and/or managers. The Federal Labor Relations Council has refused to consider supervisor or management issues, and, as a result, the high sounding statement of purpose in section 7(e) of the order is meaningless without enforcement. Neither the Council nor the Civil Service Commission has been willing to cope with the basic issue. (3) Adequate and effective communication and consultation, as prescribed by the order, have been very hard to establish. In each instance where we initiated consultation we were restricted to those issues determined to be exclusively supervisor or manager. Any issue which could involve both employees and supervisors or managers, such as reorganization or a reduction in force, was determined by USDA management as a nonnegotiable item. Issues referred to us by USDA for review or comment were for the most part on relatively insignificant topics, such as revision of forms, endorsement of amendments to operating procedures, etc. (4) Many employees requesting to have their dues paid through the voluntary payroll allotment plan have been either delayed or denied. Each agency definition of a supervisor varies. Such operations hinder our membership recruitment efforts.

We believe our experiences under the two orders demonstrate the need now for comprehensive legislation that will recognize and establish rights for all Federal employees. We therefore submit the following recommendations for consideration by the committee:

1. We support, basically, the general policies prescribed under H.R. 10700 as opposed to H.R. 13, H.R. 9784 and other introduced bills. We do, however, recommend many changes in H.R. 10700 which will make this legislation a comprehensive law that satisfies the employee-management relations needs for all Federal employees.

2. We suggest the title of the bill be revised to read, "To provide for improved employee (labor) management relations in the Federal service and for other purposes", and that the word "employee" be inserted for "labor" where applicable throughout the proposed bill H.R. 10700.

3. We recommend that top management officials such as Secretaries, Under and Assistant Secretaries, Agency Administrators, and Associate or Deputy Administrators be identified as the only positions where supervisory conflict of interest applies.

4. We suggest that professionals and supervisors be permitted to be included in a unit which has or is seeking exclusive recognition

only when either a majority of the professionals or a majority of the supervisors vote to be included. This majority is to be determined on the number of professionals or supervisors in the unit at the time exclusive recognition is requested. The inclusion of either professionals or supervisors in the unit should be determined on the basis of the expressed desire of the majority. All should not be drawn in because some did not vote.

5. We agree with the definition of a supervisor as is included in H.R. 10700. In the Federal service a large proportion of the employees have some degree of supervisory responsibilities. Janitors supervise the work of other janitors, helpers, and aides. The same applies to mail clerks and on up the line. There are all degrees of supervisory responsibilities because generally in the Federal service there is a sense of loyalty to the service and to the functions they perform. However, in each case they do not make the ultimate decisions on policy, establish priorities or approve the number and grade of employees. Even though many exercise variable degrees of leadership their work and employee interests are generally the same as the nonsupervisory employees or professionals. In some cases, nonsupervisory professionals provide the true leadership in promoting top quality professional understanding and performance by others in the unit, including the supervisors. The only supervisors that should be excluded from belonging to an exclusively recognized unit are those clearly defined as managerial and are the persons who exercise the final decision and authority to enforce any and all personnel actions.

6. The definition of a professional should not be as restrictive as is included in H.R. 10700. Professionals in the Federal service cover a large spectrum of professional services. Due to the wide variations of knowledge, training, and skills required for each of the professional disciplines, the definition should be broad enough to permit all professionals to be recognized as such. We suggest that a professional be defined as, "A person possessing administrative, scientific, and/or technical skills as a result of formal education, training, and/or experience and who is assigned to a job that requires consistently high quality individual judgment in the use of these skills."

Professionals like supervisors should be given the freedom to select the type and kind of employee recognition they wish to support.

7. We concur in the proposal in H.R. 10700 to establish a Federal employee relations authority. This authority should be an independent, nonpolitical, and nonpartisan body responsible for the establishment of uniform rules and regulations and in the interpretation and application of these rules and regulations. It should replace the FLRC established under Executive Order 11491 and assume all the responsibilities assigned under the Order to the Assistant Secretary for Labor.

8. We agree that collective bargaining in good faith between management officials and authorized employee organization representatives is appropriate for units granted exclusive recognition. Inasmuch as Federal employee rights, privileges, salaries, and fringe benefits are established by Congress and since employee organizations have been consulted and have participated in the legislative process that established these laws, collective bargaining as applied in the Federal sector should not assume the same management relations tool as collective

bargaining in the private sector. Federal managers do not have profits to share and Federal employees do not have the bargaining strength to make collective bargaining the important tool it is in the private sector. In the Federal sector employees and management can collectively develop operating procedure and policies that are beneficial to both which will respect the rights of the employee and promote accomplishing the mission of the unit or agency.

9. We recommend that professionals or supervisors be permitted to select a separate organization to represent their interests. Their organization should be permitted to seek and, under applicable regulations, obtain exclusive recognition in the unit or agency. As such, the organization would be entitled to represent and collectively bargain for professionals or supervisors.

10. We suggest that professional associations and/or associations of supervisors in a unit where the majority do not wish to obtain exclusive recognition be permitted to establish formal consultation rights with respect to matters or policies that are specifically applicable to them provided such discussions do not include matters approved for collective bargaining and where such recognition does not result in discrimination or injury to the interest of other employees in the unit. The rights of individuals should be protected.

11. Under Executive Order 11491 professionals who were included in a unit granted exclusive recognition, find it impossible to withdraw from such a unit. We recommend that employee-management legislation protect the rights of all individuals so that any special group, by majority vote of that group, can withdraw from an established unit. Many professionals who were not familiar with the labor-management procedure and who were not interested in any election for exclusive recognition find that they, by failing to vote, have been included in a unit when only a few professionals voted for inclusion. Many professionals are not interested in labor union functions and therefore do not want to be involved and wish to avoid participating or voting in elections promoted by the union.

12. H.R. 10700 provides for the exclusion of supervisors, confidential employees, employees engaged in personnel work, guards, employees responsible for administration of exclusive recognition provisions, and professionals. We recommend that the number of employees excluded from a recognizable unit by statutory regulations be the absolute minimum. Employee management law should provide all employees with the right to join the union, organization or association of their choice. Groups of employees and/or agencies desiring that specific groups be excluded from a unit should be required to fully justify and to specifically identify the employees or groups of employees that should be excluded from that unit. The responsibility to justify exclusion should rest with the agency and should only be applicable when specific conflicts of interest are evident or where national security is a primary issue.

13. We agree with section 7108(c) of H.R. 10700 that provides the right for employees to join or not join an association, organization or union. This is an individual right that must be protected. Freedom of choice is inherent in our constitutional form of Government, and we strongly support that concept. Organizations or unions with exclusive recognition should be required to represent only members of

their organization. The services and representation the organization provides should be adequate to induce an employee to join. Employees who do not join or pay dues should forfeit all right to use the services of or enjoy the benefits of the organization. Participation should be entirely voluntary.

14. We recommend that all employees be granted the right to participate in a voluntary payroll allotment plan. The President, through Executive edict, has ruled that voluntary payroll deduction may only be approved for units which have obtained exclusive recognition or for associations of supervisors and managers. We cannot see the logic or reason for such limitation. The employee has earned the salary and should therefore be permitted to allocate it as desired. The employee may, and in many instances is strongly encouraged to, use payroll allotment to (1) purchase Government savings bonds, (2) meet his or her proportional share in a United Givers Fund, or (3) designate an allotment to a credit union or other savings institution. We would recommend that any organization that executes an agreement with an agency of the executive branch, by meeting the requirement of a valid organization, is an organization that does not advocate action detrimental to the operation or function of the U.S. Government and agrees to a fee necessary to cover extra expense to the Federal Agency processing such allotments should be given the right to participate in the voluntary payroll allotment plan.

15. With respect to obtaining and enforcing effective collective bargaining, we favor compulsory arbitration with specific limits established on the time permissible to arbitrate an issue. Federal employees are a part of the public they serve and therefore should not be involved in any action which would withhold their services to compel decisions on issues under dispute. Public services provided by the Federal Government are essential to the health and livelihood of the Nation and in many ways affect the day-to-day living of each individual. Nothing in the employee-management relations bargaining process should interfere or disrupt the rendering of these services. Reasonable and sincere consultation with compulsory arbitration can be used to resolve differences existing between management and the employee. The Congress and the judicial branch of the Government can intervene to enforce equity and fair treatment for all concerned. Our organization is opposed to strikes in the public sector as we believe they have no place in judicious resolution of Federal employee problems.

In summary: With appropriate additions we support the general proposals contained in H.R. 10700.

We strongly advise statutory employee-management relations at this time.

We believe the law should be comprehensive to protect the interests of all Federal employees and recognize the rights and needs of the large block of professional employees in the Federal work force.

We support the right for both supervisors and professionals to belong to a unit or to belong to their own organization. However, the inclusion of either professionals and/or supervisors in a unit may be authorized only when a majority of the professionals and/or supervisors in the unit vote for inclusion.

We suggest that bargaining or consultation rights be granted simultaneously to more than one employee organization, that is, a union,

a professional organization or an association of supervisors in the same unit.

We recommend that top level managers be defined as the only group where a specific supervisory conflict of interest exists.

We recommend a broadened definition of a professional.

We support the establishment of an employee relations authority.

We support collective bargaining adapted to meet the requirements of the Federal sector.

We recommend separate units of recognition for supervisors and/or professionals.

We support the concept of consultation rights for associations of supervisors and/or professional organizations that do not wish to seek collective bargaining rights.

We seek the right for professionals and/or supervisors to withdraw from units with exclusive recognition.

We believe that the exclusion of employees from a unit should be held to an absolute minimum.

The exclusion of any individual or group from a unit must be fully justified and subject to the approval of the Employee Relations Authority.

We strongly support the right of individuals to join or refrain from joining an organization.

We are opposed to compulsory payment of dues or special fees to an organization.

We propose representation only for dues-paying members.

We support voluntary payroll allotment agreements for all organizations or societies.

We are opposed to withholding public service.

We favor compulsory arbitration on a timely basis to resolve differences.

We thank the committee for the opportunity to present our views on this extremely important issue. What happens in this committee and in the Congress will materially affect the kind and type of future professional service that will be provided by the Federal Government. We believe professional service is an issue that must be included and recognized as a part of the total Federal service.

Mr. HENDERSON. Thank you very much, Mr. Bradley.

Do you recommend that top-level management be identified as the only supervisory positions where a conflict exists?

In order to understand your view, could you tell us who you see as responsible for carrying out the contents of a negotiated agreement or enforcing agency rules among the rank-and-file employees?

Mr. BRADLEY. I don't believe it should go below the administrative level of an agency or people at his level that are assigned that responsibility. I put in 41 years with the Department of Agriculture. I finished as a chief of special programs. I was responsible for 21 programs. I could recommend to the administrator things that should be done, and by and large, he would listen to me.

But still my interest was more with the employees, you know, in other words, I don't believe that as chief of programs I was the one that should make the final decision with respect to number of employees we would have, with respect to allocation of funds, with respect to top-level authority, with respect to the final operation of the agency.

In the Federal Government, you have such a layer of supervisors, just layer upon layer. To deny all those supervisors the right to belong to an organization, I think detracts from employer relations legislation.

They should have a right to belong or not to belong. They should have the right to make that decision. We should not exclude them. We are pulling into management too many people that do as they are told, rather than making an effective decision with respect to policy.

Mr. HENDERSON. Do you feel that the persons who are responsible for negotiating contracts and carrying out the negotiated contracts should be permitted to belong to those organizations which they are negotiating with?

Mr. BRADLEY. No. I am talking about the administrator who should be the one who can negotiate the contracts, not down in the level of supervision.

Mr. HENDERSON. Thank you very much, Mr. Bradley.

Mr. BRADLEY. Thank you, sir.

Mr. HILL. Mr. Paul Robbins is next.

**STATEMENT OF PAUL ROBBINS, EXECUTIVE DIRECTOR,  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS**

Mr. ROBBINS. The National Society of Professional Engineers, a nonprofit group headquartered in Washington, D.C., consisting of nearly 70,000 individual members who are engaged in virtually every phase and aspect of engineering practice, and organized throughout the country on a State and chapter affiliated basis, welcomes this opportunity to present views in connection with this committee's hearing on H.R. 10700 and related proposed legislation.

My name is Paul H. Robbins. I am a professional engineer, and serve as the Executive Director of the National Society of Professional Engineers. I speak today not only for the National Society of Professional Engineers, but also on behalf of the American Institute of Industrial Engineers, a 23,000-member organization, the American Society of Mechanical Engineers with 65,000 members, and the Institute of Electrical and Electronics Engineers, a 140,000-member organization.

Representing an aggregate of nearly 300,000 individual engineers, we wish to make it clear at the outset that we are not opposed to the concept of collective bargaining. It is neither a desirable nor effective mechanism, in our judgment, for achieving the employment objectives of engineers or most other groups of professional employees. We have taken the position that employees, including professionals, should have the right to decide this issue for themselves through democratic procedures. We have been in agreement with the basic intent of Executive Order 11491 to give employees and their organizations a greater voice in the development of policies affecting their employment conditions. Because of the direct interest of our members in this area, we have followed very closely developments in collective bargaining legislation both in government and the private sector. There are a number of features which we believe should be included in such legislation.



SEPARATE VOTE FOR PROFESSIONALS

The most important feature of any collective bargaining law or regulation from the viewpoint of professionals is the provision included in both EO 11491 and the Federal Labor Relations Act which guarantees professionals the right to a separate count of their ballots in union elections to determine whether or not they wish to be included in the same collective bargaining unit with nonprofessional employees, or to be represented at all. The vital nature of professionals' interest in such provision stems from two facts: professionals are nearly always outnumbered by nonprofessionals; and professionals' interests, as a result of their duties, training and education, are so significantly different that their needs can seldom be adequately served by labor organizations which attempt to represent both categories.

We are pleased to note that all three bills currently before this committee (H.R. 13, H.R. 9784, and H.R. 10700) include adequate provision in this respect. Only H.R. 9784 and H.R. 10700 include any definition of "professional employee," however, a feature which is most important in this connection. We prefer the definition in H.R. 10700 as being somewhat more complete than that in H.R. 9784. It is approximately the same as that included in the Federal Labor Relations Act, and has generally proved quite satisfactory in the private sector.

INDIVIDUAL RIGHTS

Executive Order 11491 guarantees employees the right to join or not to join labor organizations. Any legislation displacing it should include such a provision. Unfortunately, of the three mentioned above, only H.R. 10700 would guarantee the right to refrain from participation in the activities of labor organizations. The obvious intent of the other

observed, moreover, that agency management behavior patterns, when faced with union problems, emphasize the desire to "avoid waves" rather than to assure employee rights. To assure that all parties conduct themselves in good faith, we believe that secret ballot elections should be required in all representation proceedings.

#### RIGHTS OF PROFESSIONAL ORGANIZATIONS

Most professional organizations have chosen to avoid collective bargaining as a means of improving the welfare of their members. There appear to be two basic reasons for this. First, and perhaps most important, is that most professional employees believe the individuality and judgement required in the performance of their duties are incompatible with the standardization process inherent in collective bargaining. Second, for very practical reasons, collective bargaining has not proven particularly effective as a mechanism for achieving the goals of professionals.

While collective bargaining can permit the pursuit of limited economic goals, and while it can provide a measure of protection against arbitrary personnel management actions, it cannot assure continued professional development of the individual. This is particularly true in the close, mutual trust relationship between professionals and their superiors—a relationship which is vital for professional growth and upward mobility. Collective bargaining, quite the contrary, may seriously damage such relationships and thus hamper professional growth.

Professional employees have been particularly rankled, therefore, by efforts to force them into labor-management programs—programs which are premised on the needs of other than professional employees. Current labor-management philosophy, unfortunately, was developed early this century, long before the emergence of the professions as a major factor in industrial and government employment. As a result, the dead hand of "precedent" has prevented the development of any effective means for accommodating the needs of the professionals in the realm of employee-management relations.

At the same time, professionals employed in large organizations with remote and sometimes inadequate management structures, have a need for a degree of representation beyond that available to the individual. One person simply does not have much impact on the policies of a Federal agency.

What professional engineers want and need is a means to meet and consult with management on an individual or group basis without the necessity for engaging in full-scale collective bargaining. In many cases they would also like to be able to use their existing professional societies and organizations for this purpose, rather than joining existing labor organizations or creating new ones. With this in mind, we would urge the inclusion of language to effectuate the following principles.

As provided in section 7D(3) of Executive Order 11491, organizations not qualified as labor organizations, and specifically including professional organizations, should have the right to meet and consult with management on matters of interest to members without regard to whether or not any labor organization has exclusive recognition. As indicated above, we endorse section 6(a) of H.R. 9784 in this respect, but believe that additional language should be added to indicate that management has a positive obligation to meet and confer in this regard,

and to make it clear that such consultation is not limited to "complaints" or "grievances" in the formal sense. We further believe that failure of management to meet such an obligation in good faith should be considered and defined as an unfair labor practice, subject to third-party adjudication. Obviously, in cases where a labor organization holds exclusive recognition for the employees involved, no change in agency policy developed as a result of such contacts should contravene any provision of an existing labor-management contract, and a representative of the exclusive representative should be permitted to be present and make his views known. In addition, such consultations should be limited to the extent that any resolution resulting therefrom should not be in the form of a binding agreement.

Professional organizations which indicate a desire not to qualify as labor organizations or to seek exclusive recognition should not be restrained from distributing literature, including membership literature, on Government property, or from otherwise utilizing Government facilities, as a result of any labor-management contract.

Individual employees, groups of employees, or organizations of employees should have the specific right to take part in hearings or other proceedings, the outcome of which will affect them. Under Executive Order 11491, and the three bills currently before this committee, only "parties" to the proceedings; that is, labor organizations and management, have this right. In one case, where the Assistant Secretary of Labor had specifically directed a hearing examiner to develop Government-wide policy on the appropriate relationship between professional organizations and agencies, NSPE was denied the right to directly participate on the grounds that it did not have a "direct interest" in the narrow labor-management dispute which was to be used as the vehicle to determine such policy.

An alternative to the above provisions, which has been seriously considered by both NSPE and NFPO, is a separate law or Executive order tailored especially for professionals and similar in principle to those established for Foreign Service officers and postal supervisors. While we recognize that this would present an additional burden upon agency labor-management machinery, the Foreign Service example indicates that such a separate mechanism is possible. The professional provisions described above, however, included in an overall labor-management system, should be easier to administer, and should be satisfactory.

In summary, we believe that any legislation approved by this committee should take into consideration the interest and needs of all categories of employees, including professionals, not just those who desire union representation in the traditional mold. Recognizing that such legislation is by its nature, extremely complex and technical, we would be more than happy to discuss specific language in connection with any of the above points with members of the committee or staff. In addition, we would be pleased to answer any questions or provide any further information which might be necessary to further explain our position.

We again thank the committee for the opportunity to present these engineering views.

Mr. HENDERSON. Thank you very much.

I guess one question I would like to ask: Could you give us—per-

haps for the record later—some examples of where you do have the kind of agency consultations or negotiations that you would like to see not only permitted, but required?

I just understand there must be some agencies where this does work to your satisfaction.

Mr. ROBBINS. Where it works to our satisfaction; yes.

Mr. HENDERSON. If you might call some of those to our attention, it could be helpful.

Mr. ROBBINS. I would be glad to.

Mr. HENDERSON. Thank you.

Do you have another witness?

Mr. HILL. No, sir. That is all we have this morning, sir.

Mr. HENDERSON. Well, the bells haven't rung. I think we did quite well.

I do appreciate your yielding to the earlier witness. I think you have made some very valid points that will be considered by our committee members.

I guess some of the problems we think we are faced with here sort of overwhelm the so-called nuts and bolts of the legislation, or to put it in another way, if I knew where we were going, I could be more responsive to you.

Staff may have other questions we would want to get your opinions on; and I do appreciate the attendance of all of you, even the ones that have not had an opportunity to participate in the statements and colloquy this morning.

Thank you very much.

Mr. HILL. Thank you.

Mr. HENDERSON. The subcommittee stands adjourned.

[Whereupon at 12:10 p.m., the subcommittee meeting was adjourned, to reconvene subject to the call of the Chair.]

[The letter which follows was received subsequent to the hearing:]

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS,  
OFFICE OF THE EXECUTIVE DIRECTOR,  
Washington, D.C., July 30, 1974.

Hon. DAVID N. HENDERSON,  
Chairman, Manpower and Civil Service Subcommittee, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The National Society of Professional Engineers, supported by several other engineering societies, presented testimony on July 16 to the Manpower and Civil Service Subcommittee on H.R. 10700 and related measures. At the conclusion we were asked to supply the Committee with examples of relationships between our organization and Government agencies. It is my understanding that you desired illustrations of effective relationships under the kind of employee-management cooperation we espoused in our testimony.

A number of agencies have evidenced their satisfaction with their relationships with NSPE and its policies by being most generous in encouraging their employees to share in our programs, objectives and meetings. The following are more specific examples where we feel our approach to the problem of employee management relationships has produced mutually satisfying results.

U.S. Department of Agriculture, U.S. Forest Service—The Professional Engineers in Government in the Oregon region were disturbed about problems resulting from a failure to distinguish between engineers and engineering technicians. NSPE recommended that a plan to eliminate the distinction between professional engineers and engineering technicians be dropped. Following the appointment of a task force, which included representatives of NSPE, the plan which NSPE believes would contravene Civil Service regulations was dropped.

Department of Health, Education and Welfare, Office of the Secretary Merit Promotion Plan—NSPE was permitted to suggest changes and inclusions concern-

ing the definition of professionals, qualifications of those who would review the work of professionals, career-lattice as well as career-ladder provisions, registration as a selective placement factor, and related subjects. Although the agency has not published its revised procedures, we are aware that our suggestions are being given careful consideration.

*U.S. Department of Labor Occupational Safety and Health Administration—* This agency was sympathetic to concern expressed by the Society over the delay in filling a high level vacancy which in our judgment required a professional engineering background, and recognized our fears that the delay might start rumors that the position was being downgraded. Following contacts with the agency, it was reaffirmed that the position would be filled by an engineer with professional credentials.

*General Services Administration, Public Building Service—* GSA's new architect-engineer selection procedures require some revisions to the duties of in-house engineers. Contacts between NSPE and the agency clarified the agency's intent to extensively review the duties and prepare and upgrade qualification of in-house engineering personnel to adequately meet the requirements of the new program.

*U.S. Department of Labor, Occupational Safety and Health Administration—* When it was announced that OSHA would strengthen its Office of Standards Development by adding more professional staff, NSPE contacted OSHA to offer assistance. NSPE obtained further information to alert Federal engineers to possible opportunities for career advancement. Helpful followup of the agency reorganization is being maintained and disseminated.

As a matter of general interest, many of our Federal engineers are finding the attached "Guidelines to Professional Employment of Engineers and Scientists" a useful vehicle for establishing mutually satisfying relationships with their agencies. These Guidelines have been endorsed by 27 engineering societies. The Society also annually recognizes a Government agency whose policies improve professional employment in line with these Guidelines. This is done on a rotating basis among local, state, and Federal government units and results in considerable publicity and the presentation of the highly prized Government Professional Development Award.

If we can supply additional information or be of assistance in any way, please don't hesitate to let us know.

Very truly yours,

PAUL H. ROBBINS, P.E.,  
Executive Director.

## FEDERAL SERVICE LABOR-MANAGEMENT LEGISLATION

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THURSDAY, JULY 25, 1974

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met at 9:40 a.m., in room 210 of the Cannon House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order.

This subcommittee is continuing hearings on labor-management relations legislation. We will be able to complete the record of testimony and proceed to consider the issues raised in appearances thus far, today. Since our meeting of last Tuesday, we have received two additional statements for the record, which will be inserted at the appropriate point.

Our first witness is Mr. Harmon Elder, Washington representative of the United States Industrial Council. He is accompanied by James Metcalfe of the Yellow Cab Co. of Nashville, Tenn.

Mr. Elder and Mr. Metcalfe, it is a pleasure to welcome you. Please come to the witness table and proceed any way you like.

### STATEMENT OF HARMON ELDER, WASHINGTON REPRESENTATIVE, U.S. INDUSTRIAL COUNCIL, ACCOMPANIED BY JAMES S. MET- CALFE, PRESIDENT, YELLOW CAB CO., NASHVILLE, TENN.

Mr. ELDER. I am Harmon Elder and I serve as the Washington representative of the United States Industrial Council. The council membership includes over 3,000 companies, employing some 3 million people. Our members are located in all of the 50 States, with the chairman's own State of North Carolina leading the number of States in USIC members.

Our administrative office is in Nashville, Tenn. We appreciate the opportunity to appear today and offer the council's views on legislation under consideration. We also appreciate your concern over maintaining high standards in the Federal service and protecting the rights of individual Federal employees. I have with me, Mr. James S. Metcalfe, who will present the council's statement.

Mr. METCALFE. Thank you very much. Mr. Chairman, if I may, in reading this statement, I shall depart from the text, primarily in the interest of brevity, because the actual reading of the entire text would totally utilize the time allocated to us.

I might say parenthetically that in addition to my membership with the Yellow Cab Co., I have for many years been active in Federal labor relations from the management side of the table, both as director of industrial relations for what was then the Crosley Division of AVCO and also at one time in the Industrial Relations Department of Monsanto Chemical Co. and shortly after World War II, with Southern Coach Lines in Nashville.

So, through the years, I have had rather intimate contact in the field of labor relations and contract negotiations.

My name is James S. Metcalfe and I am president of the Yellow Cab Co. of Nashville, Tenn. I am appearing before you as spokesman for the U.S. Industrial Council.

Mr. Chairman and members of the subcommittee: I would like to begin by stating that the U.S. Industrial Council is opposed to enactment of any legislation that would facilitate and encourage unionization of public employees.

We recognize, of course, that collective bargaining with Federal employee unions already has been mandated by Executive order. We think this was a mistake. To go further and compel collective bargaining between public administrators and labor unions in a statute that would remove such restraints as are included in the existing Executive order would compound the error.

There are extremely important differences between the three bills under consideration by the subcommittee. The chairman's bill, H.R. 10700, is greatly to be preferred to either H.R. 9784 by Mr. Ford or H.R. 13 by Mr. Brasco, because it includes provisions for protection of employee rights that are not found in the other two. We wish to express to Chairman Henderson our commendation for inclusion of these safeguards of Federal employee rights. H.R. 10700 also prohibits Federal employee strikes, and we strongly favor that provision.

As I have stated, however, the Council does not favor enactment of any of the three bills, and we will outline our general opposition to the legislation, then comment more specifically on some of the provisions of each bill.

In the first place, we have found no substantiation for the conclusion in the introductory portion of all three bills that collective bargaining with public employee labor unions is "in the public interest." Nor do we find that it contributes to the effective or efficient conduct of public business, as the bills assert. This conclusion, according to the Declaration of Purpose and Policy in H.R. 9784, is indicated by "experience in both private and public employment."

For 40 years our national labor laws covering the private sector have resulted in continuous industrial strife, strikes, and discord. These laws have conferred such special privileges on union organizers and union officials as to give them excessive power and create a serious imbalance in labor-management relations.

They have permitted and condoned feather-bedding and make-work practices. The construction trades, railroad and maritime unions are notorious for these practices but they permeate all highly unionized industries.

Under our one-sided labor laws, unions have accumulated so much power that they can bring the largest industries to a complete stop and severely cripple the economy. American industry has lost its com-

petitive position in world markets as wage increases have outraced efficiency and productivity.

In public employment, the rapid growth of unions of State and local public employees has been matched by the growth of public employee strikes. We have seen cities like San Francisco and New York brought to their knees by militant public employee unions.

This is the experience which is supposed to show the benefits that would ensue from conferring more organizing and bargaining privileges on officials of Federal employee unions.

If I may depart from the text, also as an individual citizen whose interest I am sure, in the field of Government, is as sincere as that of any other good citizen, I do not know what crying need generates the type of legislation that is represented in these bills.

There seems to be a premise now that people in public employment are somehow or other neglected citizens and they have used the expression on occasion, "second-class citizens."

But I have seen no honest comparison, benefit-by-benefit, wage structure-by-wage structure, working condition-by-working condition, which would substantiate the assertion they were neglected.

I think one of the criteria by which the need for legislation should be judged, is what conditions must be corrected, what injustices ameliorated or abated or what will it contribute to the efficiency of the business, the profession or the institution.

There has been, I submit, no conclusive evidence in any tribunal before any body which I am aware of, to show that people in the public sector, Federal, State, county or municipality, are in any way imposed upon by adverse conditions of compensation, employment or related benefits.

If that were so, if these evils existed, then one of the most evident results thereof would be unconscionable turnover. I don't know what the turnover figures are of public employment in any sector of the public employment, but I submit wherever I have seen a preponderance of Federal agencies in a community and a State capitol with its public employees, there is certainly very little flow of discontented employees from those working environments into that of the private sector.

But on the contrary, the trend seems to be the other way. When we talk about employee unions and permitting employees to join established labor organizations and I assume by that, any accepted labor organization, AFL-CIO, Teamsters or any other, when those employees are in the public sector, I think there is an interesting question—who is the employer of these people?

Is it the union organizer, the union business agent, president of an international union? No. I submit the employer has not changed at all. The employee is working for, ostensibly, your average American taxpaying citizen, in such free enterprise as we still have.

Now, how do you establish the rightness or the wrongness of contract provisions for a public service employee? There is, of course, some reference to denying such a union the right to strike. I submit that no matter what your contract exclusion may be or your legal prohibition against the right to strike, there is no assurance that such a strike will not occur; wildcat, authorized or otherwise.

What punitive measures are available are generally ineffective. It



seems to me not too long ago there was a strike of postal workers in New York. I don't know what was the result of that work stoppage in the way of discharges, punishment, or other disciplinary measures. If there were any, they were not publicized.

There was a rather strong prohibition against strikes in that public sector union. We are reaching a situation in this country where some dividing line, I suppose, is going to have to be determined. Are we going to have a situation where a child is bused to a school by a unionized bus driver, taught by a unionized school teacher, protected at the crossing by a unionized member of the school mother's patrol or of the local police department, rescued by a unionized fireman and then go home to a house constructed by unionized labor to be admonished for some childish misconduct by a unionized father?

Who is left? I submit that in the area of public service, all of the safeguards that you seek to put in by legislative action against work stoppages are somewhat meaningless.

Now if we were to take the public sector and actually look at the goodies that are present, there is the civil service protection. I don't know what the layoff situation is but in private employment, when the vagaries of the economy become felt, there are layoffs. I have not seen a great many people in any public sector laid off as a result of economic adversity.

I think, too, that we must be utterly realistic about the technique of union relations with management. It has to be not only an adversary relationship, but one most often engendered with hostility.

If there is an enlightened management and that management takes adequate care of the personnel with good working conditions, the usual fringe benefits, adequate pay structure, why would a union be necessary? For a moment, to compare or contrast the factors that are present in the private enterprise and union relations, a company that manufactures a product and is faced with substantial pay increases and other economic outlays brought about by the union, can usually recover some of the costs through operational efficiency, technological innovation and upward revision of his prices, remain solvent and continue to pay dividends.

Sometimes the options are not too attractive. It has been remarked the two ways to go broke in running a business are to take a strike and the other is to grant what the union asks for.

There are no cute tricks or negotiating techniques that can salvage a bad situation. There are some companies, I think, that should go out of business, if their employment practices are such or if their efforts to evade the provisions of the Fair Labor Standard Act are such that they are of dubious morality. Let them go and those companies do go.

In the public sector, how do you determine what is the fair wage rate if some business arrangement or some bargaining committee names a figure that is totally inconsistent with the economic realities and totally out of line also with any survey of that area for commensurate work?

It can't be done, gentlemen. There is no way that you can establish these things unless you can price the product.

When it comes to pricing human service, I think there are certainly denominators which lend themselves to application. Certainly, we

have in the Federal Government, as I understand it, the virtues of civil service. Civil service confers a high degree of job security upon the Federal employee; more so, I think, than can be found in the private sector.

If you have a segment of your Federal work force unionized and it decides and is permitted to strike and picket, who then, from other Federal unions, will cross that picket line?

One militant group, one striking against this Government and the citizens thereof, theoretically and actually would set up picket lines legally, which would not have to be crossed by fellow employees who are totally divorced from the dispute at hand.

There is, I think, something inherent in this whole thing, akin to Pandora's box. No contract ever negotiated ever remains a static agreement. Obviously, wage increases become a major issue on each anniversary date, but not only the wage increases, the other benefits, too.

I don't know how many paid holidays are customarily granted in the Federal sector now. I believe it was Columbus Day we had no mail delivery, but we were trying to run our business. We have postal boxes. But we saw the private enterprise people not taking a holiday on Columbus Day but going about their normal work. I don't know about sick leave. I understand there are provisions for sick leave in the Federal sector. Not too many private employment fields provide automatic sick leave. They have benefits, group insurance, health and welfare programs, but not sick leave, as such.

There are many other factors on an item-by-item comparison that should be scrutinized before legislation, almost compelling legislation, is explored.

We do commend the bill that allows certain options with regard to employees' desires to join or not join. I think anything that approaches a union shop or an agency shop in which a free-born citizen of this country, working for this Government, supported in part by the taxes of all citizens, must pay tribute to work for his country, is an anomaly and an affront. Sometimes people say yes, but we can instill the legal safeguards against the things you predict. How many times have unions been fined ostensibly for violating an agreement or an injunction, striking in the face of a no-strike clause? And then what happens?

When that union contract comes up and the matter has not been adjudicated in court with regard to the fine having been affirmed, the matter of the fine, itself, and the damages for the company, become a bargainable issue. And then what is the next step? The union says, in effect, we want a dollar an hour. Management knows it doesn't expect any dollar an hour. However, in the course of arguing, you are told if the company will withdraw its damage suit or waive its right thereof, perhaps a wage settlement can be arrived at that would be a little more acceptable.

You cannot start out with a contract with meaningful safeguards when the right to strike, in the public sector particularly, is present. The right to strike against whom?

In San Francisco, some of the members of the subcommittee perhaps recall the story of raw sewage being pumped into the San Francisco Harbor—the pollution, the jeopardy to health. At that time, there was

a teacher strike going on. There were strikers in some of the medical facilities there. It does no good to say those strikes are not Federal employees. I am sure those people are just as conscientious. I am sure they are just as honorable in their concept of citizenship as any Federal employee or anybody else. But there becomes a strange and twisted rationale which seems to induce people, sometimes to take action against what amounts to the peace and dignity of the State and the health and welfare of the citizens thereof.

The taxpayer today is already beginning to be strained by the burden placed upon him by all echelons of government. Perhaps he expects too many services or whether he wants them or not, he is getting them. If ever there was a time when economy in the government, just as in the private sector, demanded some close attention, that time is now.

No one is going to recommend that public employees be deprived of any benefits, any rights or any of those things to which employees should be entitled in any sector. But certainly there must be some other mechanism by which those things can be brought about other than joining a labor organization.

You don't have a labor party in this country. This sort of legislation would make it almost an anomaly because you will have, in effect, a labor economy. The degree today to which Government has penetrated the lives of all of us, is something that concerns people enough to remember when there was less of it, when it rode in under the aegis of union organizers and international unions. I submit we are reaching a point of rather critical proportions. We want Government workers to be the best. We want them to be efficient and justly treated. We also want them to know that the American citizen who is footing the bill, is expecting uninterrupted service.

If there are grievances to be adjudicated, there are ways to do that. Mr. Chairman, again, if one is automatically compelled to choose from the least of several evils and he has no options, I suppose it is somewhat akin to being swallowed by a whale or being nibbled to death by minnows. The end result is not particularly gratifying.

The U. S. Industrial Council is categorically opposed to unionization of the public sector employees, but recognizing that the precedent has been established and we are confronted with a fait accompli, we respectfully request that every effort be made, No. 1, to preclude any form of compulsory unionization under the union shop or agency shop idea; (2) strikes should be prohibited with punitive provisions provided; (3) all representation elections be by secret ballot and not by card count with ostensibly represents the will of a majority.

The card count is a sham and delusion as a matter of determining employee attitudes. We hope sincerely that the position of the U. S. Industrial Council will not be equated with just an outmoded reactionary concept.

But I think that what I object to here, as an individual, and what the Council objects to, actually, is fighting the battle as much for every unionized employee in the public sector as any international president would fight for the interests of his union, with no regard for—the homeowner, the man who will have to pay more taxes, the man to be confronted with greater expenses, union or nonunion, because of the burgeoning costs of government and there is no bill here that will preclude the costs going up and up and up.

You never see reduced costs resulting from a union contract. I know the sentiments we express are not always well-received. Closer to home, I find it is also evident. But we think we would be remiss as people who have as much at stake in this Government as any others, not to voice our objection. Our official position is summarized in the statement that has been submitted and as I understand, will become part of the record.

Thank you for your kindness.

Mr. HENDERSON. Your statement will be included in the record, Mr. Metcalfe.

[The complete statement follows:]

PREPARED STATEMENT OF JAMES S. METCALFE, ON BEHALF OF THE  
U.S. INDUSTRIAL COUNCIL

My name is James S. Metcalfe and I am President of the Yellow Cab Company of Nashville, Tennessee. I am appearing before you as spokesman for the United States Industrial Council.

Mr. Chairman and members of the Subcommittee, I would like to begin by stating that the United States Industrial Council is opposed to enactment of any legislation that would facilitate and encourage unionization of public employees. We recognize, of course, that collective bargaining with federal employee unions already has been mandated by Executive Order. We think this was a mistake. To go further and compel collective bargaining between public administrators and labor unions in a statute that would remove such restraints as are included in the existing Executive Order would compound the error.

There are extremely important differences between the three bills under consideration by the Subcommittee. The Chairman's bill, H. R. 10700, is greatly to be preferred to either H.R. 9784 by Mr. Ford or H.R. 13 by Mr. Brasco, because it includes provisions for protection of employees rights that are not found in the other two. We wish to express to Chairman Henderson our commendation for inclusion of these safeguards of federal employee rights. H.R. 10700 also prohibits federal employee strikes, and we strongly favor that provision.

As I have stated, however, the Council does not favor enactment of any of the three bills, and we will outline our general opposition to the legislation, then comment more specifically on some of the provisions of each bill.

In the first place, we have found no substantiation for the conclusion in the introductory portion of all three bills that collective bargaining with public employee labor unions is "in the public interest". Nor do we find that it contributes to the effective or efficient conduct of public business, as the bills assert. This conclusion, according to the Declaration of Purpose and Policy in H.R. 9784, is indicated by "experience in both private and public employment".

For 40 years our national labor laws covering the private sector have resulted in continuous industrial strife, strikes and discord. These laws have conferred such special privileges on union organizers and union officials as to give them excessive power and create a serious imbalance in labor-management relations. They have permitted and condoned featherbedding and make-work practices. The construction trades, railroad and maritime unions are notorious for these practices but they permeate all highly unionized industries. Under our one-sided labor laws, unions have accumulated so much power that they can bring the largest industries to a complete stop and severely cripple the economy. American industry has lost in competitive position in world markets as wage increases have outraced efficiency and productivity.

In public employment, the rapid growth of unions of state and local public employees has been matched by the growth of public employee strikes. We have seen cities like San Francisco and New York brought to their knees by militant public employee unions.

This is the experience which is supposed to show the benefits that would ensue from conferring more organizing and bargaining privileges on officials of federal employee unions.

In the light of this experience with labor unions in the private and public sectors, how could enactment of the proposed legislation encouraging unionization of federal employees possibly serve the public interest? By reducing strife and strikes? Experience with basically similar laws in both the public and private sectors clearly indicates the opposite. By bringing about increased efficiency

and productivity? Again we have only to look at union work rules and make-work practices in private industry to know that will not occur. By reducing the cost of government services and easing the public's tax burden? Hardly. I'm sure that none of the sponsors of the bills would maintain that facilitating collective bargaining will bring about any reduction in the salaries of public employees or reduce the number of jobs. With powerful federal employee unions exerting pressure for higher and higher wages, and with no evidence to substantiate the claim of increased efficiency, the inevitable result would be mounting costs of providing government services. And of course the taxpayers will have to foot the bill.

The United States Industrial Council is convinced that enactment of any of the three bills under consideration would only serve the interests of union officials. That it would surely do, by making it easier for them to unionize thousands more federal employees and to substantially increase their income from dues and fees.

Public employees have a Constitutional right to join a labor union and act in concert through that union. But that does not mean bargaining with unions should be compulsory for the public employer. For compulsory bargaining, coupled with the extraordinary privilege given to unions of "exclusive representation", violates Constitutional rights of public employees.

Exclusive representation, which is authorized in the bills before the subcommittee, is one of the most indefensible tools given to union officials. It is a privilege given to no other private organization in our society, and can more accurately be termed monopoly bargaining power. In this perversion of the democratic process, workers who have declared their desire to deal directly with their employers on wages and conditions of employment are forced to accept union representation they do not want. Union officials demanded this extraordinary power and Congress gave it to them, albeit with considerable reluctance as legislative history shows. "Exclusive representation" is a direct denial of the freedom and common law rights of employees and places an overwhelming organizing advantage in the hands of union officials. The employee is denied direct access to his employer in the determination of his wages and working conditions and is forced to deal through a third party—a union official. In the case of the public employee, it places the union official in a sovereign status equivalent to the sovereign status of government, which also is the employer.

Furthermore, monopoly bargaining power is used by unions as a specious rationale for their argument that employees should be forced to pay dues or fees to a union for representing them. Union officials ignore the fact that all employees do not look upon union representation as an unmixed blessing and some would, in fact, prefer to deal directly with their employers in all matters affecting their employment. Monopoly bargaining represents tyranny of the majority over the minority.

One of the arguments advanced by proponents of public employee legislation is that it is not fair to deny to public employees the same organizing and bargaining privileges as those given to employees in the private sector by our national labor laws. This is based on the premise that public and private employment is the same, when in fact they are radically different. In the first place, government services are handled by government because it is felt that they are too essential to the proper functioning of society to leave them to the vagaries of the market place. Secondly, government services are monopolies or virtual monopolies and hence peculiarly in need of reliability and continuity. Strikes and disruptions of service by public employees leave the public vulnerable in a way that strikes in plants producing automobiles or electrical appliances can never do. Thirdly, the checks placed on union demands and employer acquiescence by the exigencies of the market place in the private sector do not exist in the public sector. In order to show a profit and survive, the private employer will strongly resist extortionate union demands. But the public administrator, faced with the fear of disruption of government services and political pressures from powerful unions, will put up only weak resistance to excessive union demands. Fourth, the taxpayer, who has no say in the signing of an extortionate contract, is forced to pay for its costs through higher taxes. He has no option to buy or not buy the product, as he does in the private sector.

Fifth, an individual who enters public employment becomes by choice a public servant. He gives up certain prerogatives that he has in private employment. On the other hand, he receives some benefits in the form of annual leave, paid holidays, retirement, security of employment and other rewards frequently superior to those in private employment. If the pay and benefits in federal service are

not sufficiently attractive, the federal employee is free to leave and seek private employment. This insures that Congress will make the pay and working conditions in federal service sufficiently attractive to attract the needed employees—and it does not require collective bludgeoning by labor unions to achieve this result.

The civil service system was developed in this country to keep public employees from having to be concerned with politics and enable them to work under fair and uniform conditions. That system is being undermined and perhaps will in time be completely destroyed by federal public employee unions. The question arises: Shall federal employees continue to receive the benefits provided under civil service plus everything else they can extract under pressure of collective bargaining? An even more important consideration is the re-involvement of civil servants in political activities.

Legislation which facilitates unionization of federal employees would provide additional resources for the already extensive political activities of federal employee unions. These unions, by providing substantial political campaign help for candidates promising more economic benefits for their members, would gain increasing power over the Congress. Federal agency and administrative heads, fearful of the unions' political clout, would be reluctant to oppose their demands in collective bargaining. And the end could well be that private organizations—labor unions—would exercise more power than the federal government itself.

This threat would be substantially increased if legislation were to be enacted authorizing the compulsory union shop or agency shop, as provided by two of the bills under consideration. Federal employees would be compelled through the payment of dues and fees to provide funds for political activities in behalf of candidates many of them oppose. The resources for union political activities would be greatly enlarged. Discussing this threat, Professor Kurt L. Hanslowe of Cornell University, former assistant general counsel of the United Auto Workers, said:

"The union shop in public employment has the potential of becoming a neat mutual back-scratching mechanism, whereby public employee representatives and politicians reinforce each others' interest and domain, with the individual public employee and the individual citizen left to look on, while his employment conditions and his tax rate and public policies generally are being decided by entrenched and mutually supportive government officials and collective bargaining representatives over whom the public has diminishing control."

Our remarks thus far have been in general opposition to enactment of any of the bills before the subcommittee. We would now like to discuss some of the particular features of the bills.

H.R. 10700, like the existing Executive Order, provides that federal employees cannot be forced to join a union or pay agency fees. We commend the Chairman for including this vital protection of basic employee rights in his bill. It places a significant restraint on federal employee union monopoly power and thus makes the Chairman's bill much to be preferred over H.R. 9784 or H.R. 13, which contain no such restraint.

All three bills make the government the dues collector for unions at no cost to the unions, which means the taxpayers have to pay the cost of collecting union dues. Although authorization for dues deduction is voluntary in the case of H.R. 10700, whereas, deduction is required in the other two bills, all three bills make the deduction authorization irrevocable for one year. H.R. 10700 would go further in the direction of voluntarism if it permitted a federal employee to revoke the deduction authorization at any time.

H.R. 10700 makes a small breach in the "exclusive representation" privilege in that it permits an employee to either represent himself, or name someone other than the designated union bargaining agent to represent him, in the handling of grievances with his employer. We feel it is too bad that H.R. 10700 does not go further and eliminate "exclusive representation" entirely. Since it forces some employees to accept union representation they do not want in bargaining for wages and working conditions, "exclusive representation" is in effect a form of compulsory unionism, and as we have stated earlier, we strongly oppose it.

All three bills would set up an NLRB-type body to carry out provisions of the acts. In the Henderson bill and Brasco bills it would be known as the Federal Labor Relations Authority and in the Ford bill it would be known as the Federal Employee Relations Board. Like the NLRB, it would be composed of political appointees, and, also like the NLRB, its bias and the nature of its decisions would change with Administrations and with appointees. This is one of the

major flaws of the National Labor Relations Act and it would carry over into all of the bills being considered.

H.R. 10700 prohibits federal employee strikes by excluding from its definition of a labor organization one which assists or participates in a strike against the United States Government. Neither H.R. 13 or H.R. 9784 contains such an exclusion. H.R. 13 provides that in an impasse the decision of the Federal Labor Relations Authority shall be binding, but is silent on what happens if employees strike anyway. H.R. 9784 specifically permits strikes.

While we agree with H.R. 10700 that federal employee strikes would be illegal, experience has shown that making strikes illegal in either the private or public sector does not necessarily prevent or stop them. Strikes are common among state and local public employee unions in states where such strikes are prohibited by law. It is deplorable, but a fact which must be considered that the courts have frequently failed to enforce the law or to impose fines and jail sentences of enough severity to deter public employee strikes.

One of the most serious deficiencies in the bills under consideration is the permission given to the Federal Labor Relations Authority (in the Henderson and Brasco bills) and the Federal Employee Relations Board (in the Ford bill) to grant recognition to a union as exclusive bargaining agent without a secret ballot election. Forcing union representation upon an employee without even giving him a chance to vote on it flouts the fundamental right of an individual to make his own decisions. The practice has led to misleading and coercive practices by union organizers in the private sector and is a prime source of disputes between unions and employers.

H.R. 10700 differs significantly from the other two bills in the scope of bargaining with federal employee unions that would be authorized. Like the Executive Order, it does not include in the scope of bargaining such management rights as the mission, budget or organization of an agency, number of employees, or types and grades of positions. It reserves the right of management to hire, fire, promote, transfer and assign employees as needed. The other bills make the scope of bargaining practically unlimited. They make it possible for union officials to determine how agencies would be set up and operated, with the agency head having virtually no voice in the matter.

Union officials have made it clear that they intend to put up a strong fight to eliminate the protection of management rights in the Henderson bill. In the testimony of Andrew J. Biemiller of the AFL-CIO before this subcommittee he stated that it was particularly important "to eliminate the unnecessary and provocative safeguards of management rights". He said that they "need not be specifically spelled out". Of course he insists that all rights and special privileges for unions and union officials be written into the law.

It has also been made clear by union officials that they are not willing to accept the Henderson bill's protection of the right of federal employees to join and support or refrain from joining and supporting a labor union. They have served notice they will be satisfied with nothing less than the union shop or the agency shop in which employees would have to pay in order to be allowed to work for the federal government.

There are numerous features of the federal employee bills other than those we have mentioned that we find strongly objectionable. We do recognize the good features contained in H.R. 10700 and if any federal employee legislation should be reported out of the Subcommittee we urge that it contain the Henderson bill's provision for federal employee freedom of choice, protection of the government's management rights, and prohibition of federal employee strikes. In closing, however, we reiterate the opposition of the United States Industrial Council to approval of any legislation that would facilitate and encourage the unionization of public employees.

Mr. HENDERSON. I will limit my questions to the prepared statement as rendered to us because this has afforded me the opportunity to see what you did prepare for the record.

On page 3, you indicate, "Public employees have a constitutional right to join a labor union and act in concert through that union." Can you explain what you mean by act in concert?

Mr. METCALFE. That means that, in effect, the union will establish policy and they become part of that policy. The whole effectiveness of

the union provision is concerted action; that is, a certain degree of nontotal unity but close to it.

Mr. HENDERSON. Once that right has been exercised and a union has been formed, what concert or what action do you think is proper? Are those actions spelled out in the present Executive order?

Mr. ELDER. Mr. Chairman, if I might answer that question, we object to compulsory collective bargaining in the private or public sector.

Mr. HENDERSON. What do you mean by compulsory?

Mr. ELDER. Mandated bargaining. Both the bills would require that the Federal administrator engage in collective bargaining with the union.

Mr. HENDERSON. I assume you are saying we should repeal the Executive order. But if that is your position—I am trying to get back to the basic point of constitutional right to join a union and act in concert. What rights would they have to join a labor union to take action. What action could they take absent the Executive order? Are you saying they have a right to join a union and that is all the constitutional right gives them.

Mr. ELDER. Pretty much, yes, sir. Any individual, as a constitutional right, can belong to any organization which is not subversive or illegal. What we are saying is we don't think you could forbid anybody to join any organization.

Mr. HENDERSON. What I want to get at is the words, "act in concert." What acts in concert would you permit?

Mr. ELDER. What we are saying is that if this man wants to join the union and have the union say it represents him, that is his right.

Mr. HENDERSON. Represent him where?

Mr. ELDER. In any respect.

Mr. HENDERSON. Acts in concert. What are you talking about, acting in concert?

Mr. ELDER. In this context, we are talking about collective bargaining, if he wants to give the organization the right to bargain for him.

Mr. HENDERSON. Once the union is formed and there are members, does the union leadership have a right to collectively bargain, if given the power by the union members?

Mr. ELDER. They have the right to ask for it and we don't think the Federal administrator should be mandated that he has to engage in collective bargaining.

Mr. HENDERSON. Who are the public employees, employers?

Mr. ELDER. The taxpayers.

Mr. HENDERSON. If the taxpayers, through the elected representatives, give the President the right to collective bargain, is that unlawful or unreasonable?

Mr. ELDER. Apparently, it is not unlawful because it has been done. As our statement says, we don't think it should have been done.

Mr. HENDERSON. I understand you are saying they can form a union and the union officials then have a right to collective bargaining, but there are no requirements on the part of management to bargain with them on any matters?

Mr. ELDER. That is our position. It should not be mandatory.

Mr. HENDERSON. Who would make that decision as to whether or not they would bargain? Would you have it done at each agency or instal-



lation subdivision? Who makes the decision of the scope of collective bargaining?

Mr. METCALFE. Mr. Chairman, if I may join in. I don't know if it is proper procedure.

Mr. HENDERSON. I don't quite understand.

Mr. METCALFE. As I say, we recognize the fact that we are confronted with already an accomplished fact under the Executive order. We recognize they will have these things, although we want to be on record as being thoroughly opposed to unionization, as such.

Mr. HENDERSON. When you say public employees have a constitutional right to join a labor union and act in concert through that union, I am trying to find out how far you would go?

Mr. METCALFE. A very short distance. To this extent, it would vitiate the effectiveness of the union. Namely, if what they need is a voice to express their somewhat consolidated opinions and attitudes and preferences and the union can act as that consolidating agency, all right. But when you enter into the compulsory aspect of management-union relationship and inject those into the Government sphere, then we think we are getting into a dangerous, dangerous situation. We have seen it.

Mr. HENDERSON. They have a constitutional right. Is that right meaningful or what does it mean?

Mr. METCALFE. It confers a right but not an unrestricted right, in my opinion.

Mr. HENDERSON. In your statement, what do you mean—you are talking about public employees because we must, at least in my opinion, separate the private sector from the public sector. We attempt to do that in all the legislation and I think the Executive order basically recognizes the difference. If you are saying that they have a right to belong to a union but you go on to say to act in concert, what I was trying to find out is, what action would you permit and who would you have making the decision as to what the management side in the Federal sector—how do they respond to the union leaders?

Mr. METCALFE. First of all, assuming that the composition of the bargaining unit has been established, I don't know your gradations of management versus the exempt people, in the Federal employment. Assuming you have a bargaining unit constituted, then the bargaining unit members, through their committee men or whatever their infrastructure up to their business agent say, these are the things we want. These are the things we would like to have. Now, it becomes a clearinghouse of information which is relayed to an appropriate agency or echelon in Government, whatever it may be.

Now, I think it is informative. Factors that are contributing to low morale and things of that sort can be brought forward under such a system. But when it comes to a matter of a segment of the Government employee force determining it wants so and so, when they have a right to strike and that sort of thing if it doesn't get them, I think it goes beyond the bounds of what collective bargaining should provide in the public sector, regardless of echelon.

Mr. HENDERSON. I see. I don't agree with you now. I can't agree with you in my own philosophy. I agree with you that constitutional rights are circumscribed or should be by the Congress or by the President, under authority granted to him by Congress, or inherent in this office.

If we circumscribe this constitutional right and say you can join a union, but you can't strike, if we say you have the right to join or not to join and the question of agency shop, don't you think it is just as incumbent for the Congress and President to spell out what areas there shall be bargaining over, what they may be permitted to talk about? Don't you think it is incumbent to make that constitutional right a meaningful one, to prescribe what negotiations shall go on?

Mr. METCALFE. Well, I certainly do, sir. I think this. If enactment of this type of legislation is inevitable—yes, I do.

Mr. HENDERSON. Let me show you what I think the difference is. You have great experience in the private sector but at the present time in the public sector, under the Executive order, the right to unionize is granted and I think the acts in concert are pretty well spelled out. No agency shop, no right to strike, are among them. The Federal manager is not permitted to negotiate with regard to the mission of the agency, the pay of the employees, the benefits and I am speaking generally now. In the postal service, we made an exception. But do you believe that all the things that are not specifically prohibited by way of Executive order or by legislation, ought to be left to the negotiation table between management and unions?

Mr. ELDER. If I might answer. To summarize this thing, I believe, we are flatly opposed to unionization in the public sector. We don't think it has any place.

Mr. HENDERSON. Isn't that inconsistent with your statement that public employees have a constitutional right?

Mr. ELDER. We don't think so. The reason we put that in, although we are opposed to unionization in the public sector, we don't think we can say a public employee cannot join a union. There is a constitutional right to join any organization. We are saying the Government doesn't have to bargain with that union.

Mr. HENDERSON. Having gotten that answer, I think you pretty well explained your testimony to me. There is another subject here which you both are perhaps more expert on.

What do you think of the right to unionize in the private sector of this country?

Mr. METCALFE. I realize that time of putting your finger in the dike is 30 or 40 years behind us. The right to unionize in the private sector is such an established concept now that we can accept it as a permanent part of our national philosophy. However, I will say this, that the right to unionize in the private sector has introduced some of the greatest inequities, more industrial chaos, than anybody ever envisioned. I think there should be certain activities circumscribed, prohibited and meaningfully so.

Mr. HENDERSON. Let me ask one further question. Your response is a fair one, irrespective of what basic philosophy you may have about the right under the Constitution, but do you believe that in the private sector, that employees through their unions, ought to have a right to strike?

Mr. METCALFE. Yes, I do. I do, sir. I certainly do. But I think the right to strike should be automatically accompanied by a limitation with regard to the activities allowed during a strike, for example.

Mr. HENDERSON. We have laws on the books that are examples of that, too, don't we? For example, the National Labor Relations Act?

Mr. METCALFE. Laws that prohibit misconduct, fear, coercion.

Mr. HENDERSON. Specifically the right to strike or other union activities.

Mr. METCALFE. Yes, we do.

Mr. HENDERSON. How do you feel about union shop or agency shop in the private sector?

Mr. METCALFE. Bitterly opposed to them.

Mr. HENDERSON. Just as you would in the public sector?

Mr. METCALFE. Yes, sir.

Mr. HENDERSON. Do you distinguish a difference between that right, as related to the private sector and the public sector, if you had to choose between one or the other?

Mr. METCALFE. If it had to exist in the private or public, it ought to be in the private. It shouldn't be anywhere but if it has to exist at all, let it be in the private.

Mr. HENDERSON. What do you think of the provisions in the National Labor Relations Act that leaves this decision to the legislatures of the several States?

Mr. METCALFE. I think there is a virtue in it. The climate sometimes changes as States change from an agrarian to the industrial type of basic economy. But, for example, with the right to work law as it is generally called, I don't know that it is a total blessing but psychologically it has genuine value. Furthermore, it does impose on unions some sense of having to exercise a little bit more selling of the benefits of their endeavors. But frankly, I think this. I am talking now as an employer and negotiator. One of the great evils in the whole union structure is the lawlessness, the coercion, the fear.

It is there, gentlemen. I don't care what people tell you. These things don't always find their resolution in the dignified marble halls of a stately building. I have had too many calls from people who have been threatened in my time.

Mr. HENDERSON. You are speaking more toward the private sector?

Mr. METCALFE. Yes, sir, I am. But those things inevitably creep up. Certainly, when we saw the striking schoolteachers and saw the verbal exchanges, I was shocked at this. I don't believe there is any way a legislative restriction or anything else can keep these things from creeping into the area of management-labor relations.

It has to be a hostile relationship.

Mr. HENDERSON. Well, let me conclude by saying that I think in your response to my questions, you have pointed out that as it relates to the private sector—you have arrived at the point that the right to organize themselves into unions is the right of your employees. The right of collective bargaining within the restrictions of proper laws and so on are correct. As I understand your basic position, it is that this right to no extent should be extended to Federal employees. I use Federal employees because that is what is before us, not with regard to what the States do with their employees, public employees.

I presume from your testimony you take the same position there?

Mr. METCALFE. Precisely so, sir.

Mr. HENDERSON. I think the President, with the Executive order, and Congress, with its action, has acted and is moving to act and simply disagrees with you to the point we believe it is time for us to circumscribe and prescribe the right of the employees and to protect the rights of management and the taxpayers by way of legislation. That is the primary purpose of these hearings. We very much

appreciate your written statement and your testimony before us this morning.

Mr. ELDER. Thank you. I have enjoyed the opportunity to be here.

Mr. METCALFE. Thank you.

Mr. HENDERSON. Our next witness is Mr. Vincent Paterno, accompanied by John Chapman.

Mr. PATERNO. It is a pleasure to be here.

Mr. HENDERSON. You may proceed with your statement.

**STATEMENT OF W. VINCENT J. PATERNO, PRESIDENT, ASSOCIATION OF CIVILIAN TECHNICIANS; ACCOMPANIED BY JOHN CHAPMAN**

Mr. PATERNO. I find myself in an interesting position vis-a-vis the last witness, because my particular statements will be in a different tone, and different viewpoint. I would like to say that I have 25 years of Federal service, as a Federal employee and in the military, and I can't quite find myself as an irresistible monster or large-scale threat to the Government. I think at this point I would like to read my statement. It was written with a number of appendices attached for the committee and I think it represents pretty well, my position on the legislation that has been proposed.

It is not specifically "Monday morning quarterbacking" because these are positions I have had for quite awhile.

There are mixed feelings of reservation and guarded optimism as I testify before this respected subcommittee on the matter of Federal employee labor relations legislation. Caution that the legislation might anchor into bedrock of law requirements that could hamper reasonable efforts to represent thousands of employees properly. Optimism that having a well-founded law could enhance the collective purposes and provide new avenues to achievement. I must admit that none of the proposed legislation is, as written, the total answer, in my opinion.

Collective bargaining, the real issue at hand, must be generated into an issue of equals or there can be no such machinery except in words. We can make statements about binding arbitration and third-party dispute settlement but, in my view, we are proposing end products most commonly effective at crisis times. An agreement between parties to use binding arbitration differs essentially from the initial requirement that it is the only path. A legislated "cooling off" period in the face of a work stoppage would give time limits and emphasis to the need for agreement. An injunctive stay through the courts might provide the climate for effective mediation. How, in any lesser circumstance, can we identify the critical points in the bargaining process. The coloration of all issues, when there is a standard device of third-party decision, is gray. The identity of crisis, or of fundamental issues of conflict, will not otherwise appear until, as in the other public sectors, illegal strikes and stoppages occur. Will we then make the critical area a new public corporation as we did with the Postal Service? The answer, of course, is "No."

We must provide in this legislation ultimate means such as pickets and work stoppages to surface as facts or probabilities to establish where the problems are and mitigate them through mediation efforts, third-party entries where needed, and cooling off periods. This, in

fact, is not so much an argument for the right to strike as it is for the methodology to recognize and alleviate critical bargaining areas. It is, too, a necessary means to create equality at the table and to wipe the smugness from the faces of management as they bargain with no fear of resulting crisis.

I submit that the right to strike issue is one of obfuscation and is used as a concealment of the major issue—that of increasing the scope of bargaining and of providing the bargaining table with the need for agreement by equal parties. I can presently conceive of no issue that would initiate a strike among Federal employees on general terms nor of any union that would call for one. None of the unions in the Federal area have the strike funds nor desire to initiate this approach. I can, however, conceive of some isolated bargaining units, where management is so bad, that crisis prevails. If it did, the national union would be as anxious as Government to provide settlement and with the concealing cover thrown off could probably achieve it.

Despite the numerous statistics quoted by Chairman Hampton in his presentation to prove the effectiveness of bargaining, I can state, without any fear of meaningful contradiction, that contracts so far achieved are without real substance and result most commonly from the frustration of time and nonnegotiability determinations. The scope of bargaining is limited by agency regulations, time elements in the procedural systems and the adamant positions taken by management, who stand to lose nothing by delays or frustrations. The nice sounding words of “cooperation” or “bilateralism” are not interpreted into policy.

How, then, can we enhance bargaining, if it is really desired? What is the “hammer” we can give to the employees seeking contractual security? Where do we let surface the real “crisis” issues, which may differ agency to agency and in work site location? And how and under what timetable do we bring the needed sophistication about?

These questions are hard to answer simply. I do not think that H.R. 10700 goes far enough despite its improvements on the Executive order.

I further believe that H.R. 13 and H.R. 9784 tend to provide an immediate requirement to negotiate on terms such as wages and fringe benefits that could lead to a breakdown of the whole area of collective bargaining and result in confusion, friction, and improper representation on both the management and union sides.

The answer seems to be in the establishment of mandatory items of bargaining in a progressive time frame that will allow the sophistication and experience to develop. Congress, in its responsibility to law, must become a continuing party, by annual review to supersede its statutory requirements with a view toward ultimate negotiations on all items affecting working conditions. The law should establish full negotiable rights over regulations unless they are specific in reference to statute and even then subject to immediate review upon request. With this starting point, and with the provision of equivalent status bargaining, the sophistication of real negotiations could be developed.

Federal employee unions have been hampered by their lack of bargaining clout in achieving dues structures to support the essential staffing for full range economic bargaining. More effective negotiations, in a growing concept, will allow this to develop as would a realization that dues or equivalent charges from all members of a

bargaining unit is appropriate. Full representation with only voluntary dues is like running a Government on voluntary taxes.

I can conceive of a smaller "NLRB," Federal Labor Authority, call it what you will, as an independent body but have reservations on the extent of its decisionmaking powers and would reserve ultimate judgments to the courts. Regardless of its method of selection it would have to suffer political appointment. Inherent in its charter should be a dual reporting relationship with the Congress and the executive since both would be concerned in the statutory and administrative processes. I would find it consistent with good procedure that a joint Senate and House committee be in constant standing for the overview. The executive must, without question, deal with the labor-management area and the Congress should. The problem of superseding laws and budget projections require their continuing attention in an organized fashion. It would not be easy—but no other equitable way offers.

The concept of bargaining is with the public sector in full strength and will not be effectively met until it is fully recognized. I cannot agree with Chairman Hampton when he indicates that contractual agreements will violate merit standards. If anything, they will improve them to a greater degree by insuring a uniformity of treatment and negotiated standards that will effectuate systems of selection and promotion based upon known and published measurements. It is certain that seniority would be a large proportion of rating but that stands more firmly than the present selection system which is cumbersome and regularly capable of personal bias and choice. The two sides to the table are insurance, or should be, that equity and reasonable public service would prevail. It is not now so.

The recent criticism by the Comptroller General indicates the methodologies used by management in reduction-in-force programs are less than adequate for public protection. I submit that properly negotiated procedures without undue regulation of management prerogative would better serve performance, justice, and equity. The human factor in a negotiated contract is one of universal treatment as a union standard, as against management's common choice of the human they happen to like or find useful.

The same rationale pertains in work scheduling, disciplinary treatment, adverse actions, wearing of uniforms, grooming standards, safety procedures, hazard and dirty pay, overtime scheduling, bargaining unit work performed by supervisors, manning and work measurements, job classification, specific designated supervisory and management personnel, sick and personal leave usage, job retraining, and the identification of work and travel time. Management should no longer say, "You do because I say you do." They must manage in modern times, with modern terms and under common circumstances.

Chairman Hampton in his long and detailed presentation carefully identifies each problem and then casts new treatment aside by the simple and paternalistic position that they are doing it as well as it can be done so why change. He quotes the huge success of the program and indicates that there are no "horror stories" or real reason to change from executive prerogative to law. I do find horror stories and many specific reasons for change.

It should be noted here that Mr. W. J. Usery, Chief Federal Mediator and the former Assistant Secretary of Labor for the Federal Service, has recently been publicly noted as agreeing with the identity I have given labor contracts in the Federal area as basically too limited to be meaningful and further identifying the right to job action as not simply replaceable by any known machinery. His position only gradually pronounced, as the dialog has increased, marks vast differences from Chairman Hampton's statements. I must submit that it may be a semantic difference in the identity of "horror" that prevails. I would expect that Chairman Hampton, sitting in defense of what is and has been, is self-protective and totally managerial in his position—and shortsighted.

In many instances the courts, despite their reluctance to determine Executive order questions, have become the avenue of last resort for our union. A man hurt in 1968, by demotion in his civilian job in Pennsylvania, for union activities, had to be made whole by the Third Circuit in "*Lasher v. Shaffer et al*" in 1973. A man fired for grieving his unlawful military usage in Delaware had to be made whole by the Court of Appeals after 3 years of administrative and legal appeals in "*Chaudoin v. Atkinson*" in 1974, again the Third Circuit Court of Appeals.

A case in Montana now appealed to the San Francisco Court of Appeals on the uniform. A man fired for grooming now in the Pittsburgh District Court. Three men fired for not wearing military uniforms now in the District Court in Detroit. A man fired by refusal to reenlist about to reenter the District Court in Brooklyn after court ordered administrative appeals failed of justice. Two other cases pending presently and a complete dissatisfaction with justice as administered under the Executive order.

Unfair labor charges filed early in 1971 not yet finally adjudicated despite hearings in the summer of 1973 in New York. Contract negotiations started in 1971 in the same State not yet completed. A contract signed in 1971 not yet in effect in Peoria, Ill., despite filing of ULP charges, not yet heard, in 1973; ULP's rampant in Pennsylvania as they use every method to delay negotiations possible, obviously in no fear of any charges. A real circus of frustration and meaningless labor relations.

The National Guard Bureau with full approval of the DOD, Department of Army and Air Force, promulgating regulations and setting with no fear of recrimination a debacle of purposes not in any way to be called "bilateralism" or "cooperation."

I have faith in no halfway answers to collective bargaining but do recognize that a timeable must be established for those items in the large economic area to prevent utter chaos. The failure of real bargaining in good faith to take place has kept the burden in the Congress and this must be substituted for in a fashion that can be achieved realistically. However, the collective bargaining area can be increased dramatically at once. To do this the following areas need complete negotiable range:

(a) Jobs classifications need an applicability to wage levels rather than arbitrary and non-negotiable descriptions and archaic standards.

(b) Shift assignments and work to be performed by appropriate personnel must be fully negotiable.

(c) Grievances and adverse actions for all employees, including new hires, and here I am specific because probationaries are treated poorly in this country, must be negotiable together with appropriate disciplinary standards and binding arbitration over the full range.

(d) Reduction-in-force procedures must be fully negotiable including retraining and reassignment.

(e) Overtime pay and assignment must be fully negotiable beyond the Fair Labor Standards Act and without reference to other laws and regulations.

(f) Safety standards and emergency medical support must stand the full range of bargaining.

(g) Merit promotion standards need rational negotiated procedures to protect the public and the members of the bargaining unit from inappropriate appointments.

(h) Performance evaluation and job-related requirements for continuing employment must be negotiable.

(i) Hazard and dirty pay premiums must meet the challenge of collective bargaining.

(j) Leave assignments, sick standards, and such new items as sabbatical leaves with pay must be discussed and negotiated.

(k) Health insurance plans must be negotiated, including employer's share of cost, because in this particular area, I don't think the civil service has negotiated very well.

(l) Early out retirement must be negotiable for employee and managerial options with a view toward possible achievement of law enforcement standards for appropriate jobs that are physically or mentally taxing. This shouldn't be something coming back to the Congress. It should be capable of being negotiated and recognized at the place and at the worksite. It seems we are overutilizing the legislative process in this particular area.

(m) Grooming standards and wearing of uniforms must be established by negotiations and not the arbitrary standards of managers who want to see themselves surrounded by workers who dress and look like their (the managers) children won't.

(n) Travel time and work time should be negotiated in relation to actual worksite performance and requirements, not by universal regulations and laws that are not functional concepts of the time taken away from an employee's personal life and family.

(o) Productivity, the new key work in the administration vocabulary, will never meet the negotiable range without incidental security and rewards for increased performance. We should not anticipate negotiations or actual performance that will do away with jobs as an end product. Just Tuesday of this week, we had a consultation with the productivity group up in General Accounting. They have been doing work, but they haven't gotten to where the work is done. They are up at the agency level.

(p) Contracting out should be completely negotiable and not left to the discretion of policymakers who would appear to have vested interests not so significant as a worker's career.

(q) Supervisors should be limited by negotiations from performing bargaining unit work. They should, if they are to be excluded from unions, be managerial only.



I am certain that many more items could be mentioned but these few signify the extent to which bargaining can become real and ultimately lead to full range economic negotiations. These items are all proscribed to the largest degree by law and regulation. Let the bargaining begin.

To better the climate we need appeals machinery that can take an issue from impasse to resolution in weeks—not years. We need unfair labor practice procedures that punish transgressors from management—not just unions. We need investigations performed by the third party rapidly before issues become moot. We need effective and immediate mediation. We need definitions of supervisors that allow no management determinations of arbitrary exclusion standards. We need financially sound unions, capable of democratically achieving dues or charges from all employees served by the bargaining unit. We need a Government philosophy of “will do” with dispatch if it is to work.

And as all this proposes to be done the bargaining unit must be democratically achieved with a full range of acceptance by work site, base, or grouping that serves representation. We do not need Section (h) on pages 24 and 25 of H.R. 9784, nor section (i) of pages 13 and 14 of H.R. 13, that will legislate national bargaining units. These are achievable by multiunit bargaining, as in the private sector, or in the language of H.R. 10700. This particular approach in H.R. 9784 and H.R. 13, invites “sweetheart” deals by agencies and unions to the possible thwarting of legitimate employee desires.

Bigness can be bad or good but the evidence in the private sector is that the rank and file must be heard and that this is a significant problem in today's labor area. Keep what is and let unions approach their own responsibilities in arriving at accumulative bargaining.

This area of public labor-management relations is one of the most dynamic before the Congress today. I request this committee to act wisely and with needed dispatch to provide the preventive solutions before the current trend of insecurity finds us healing outbreaks that have rapidly generated. I am certain that this will happen.

[The appendix material submitted by Mr. Paterno was retained in the files of the subcommittee. The material is identified as follows:]

- (A) Lasher v. Shaffer, et al.
- (B) Chaudoin v. Atkinson.
- (C) Montana Chapter A.C.T. v. Brg. Gen. Roger G. Young.
- (D) Alvin J. Syrek, et al v. Penna. Air National Guard, et al.
- (E) David E. Bruton, et al v. C. C. Schnipke, et al.
- (F) Robert G. Duo v. Capt. Frank Polis, et al.
- (G) N.Y. State Council, A.C.T. (complainant) & N.Y. Army and Air National Guard (respondent).
- (H) Illinois Air Chapter, A.C.T. (complainant) & Illinois Air National Guard (respondent).
- (I) Disposition of agency charges—Re: Work Stoppage—N.Y.
- (J) 3 items—Re: Federal Labor Relations Council review—dated Oct. 24, 1973, Feb. 8, 1974 and Apr. 24, 1974.

Mr. HENDERSON. You say in your testimony, “We must provide means such as pickets and work stoppages to service problems and mitigate them through third party means.”

You indicate a need to speed up impasse resolutions. Could you give us your suggestion as to the methods you propose to settle impasses and speed them up?

Mr. PATERNO. I am trying to say—I am not wise enough to find a decision other than the one they have in the private sector, to let a crisis develop, to provide a climate under which the third party system can be invoked.

If we establish the third party system at the entering point, then all issues will end up in the third party system and the number of tooth-picks they have on a table in a cafeteria will be of the same value as a valid genuine dissatisfaction with work.

Under the present system, we can't identify which is the crisis issue and which is a ridiculous issue. We are talking about things going to impasse panel on parking spaces. We haven't had a real serious situation yet, which has been solved by third party procedures.

Mr. HENDERSON. On page 8 of your testimony, paragraphs (a) and (b) refer to job classification of work to be determined. You indicate they are in a complete and negotiable range. What do you feel these items cover and do they intend to cover work to be done by employees?

Mr. PATERNO. We are discussing here and I am primarily thinking of aircraft mechanics, for instance, being paid on an area wage scale when, in effect, the industry itself is paid on a national wage scale with little separation. The aircraft mechanic in the private sector is paid basically on private contract. This is what I mean; they need to be applicable to wage level. It is not enough to classify something—someone in a white collar and tie sitting in the Civil Service Commission and saying somebody has these skills and this is what we will pay.

If the pay is out of line with the job in that area, then you have an area of dissatisfaction. Under the present accountability circumstances—we are a year or more behind. But the standards, themselves, I find almost as difficult. As I go into the field of job classification and description, it is almost impossible to rely on this in a measuring sense. I think if we did this at the bargaining table on a site location where jobs differ because of the different application of skills provided, we would tend to go into industry in this area and we would tend to make a more broad range circumstance and we would tend to apply the actual fact of what the man does rather than what they want him to do.

Now, in the National Guard Bureau, the job descriptions for 45,000 people are written centrally, not on site.

Mr. HENDERSON. You are talking about the classification and not work assignment?

Mr. PATERNO. Work assignment, I have treated in another place.

Mr. HENDERSON. Let me ask you this. You mentioned the aircraft mechanics in the private sector are paid on a nationwide scale?

Mr. PATERNO. Basically, yes, sir.

Mr. HENDERSON. You think aircraft mechanics working for the Government should be paid on a nationwide scale?

Mr. PATERNO. Here I can comment on the wage legislation. I think when you have an item like this, with commonly identifiable wage circumstances on the nationwide basis, then I can't see why the wages can't be based on the national rather than regional basis. We have aircraft mechanics working in large numbers in Great Falls, Mont., but there are no aircraft mechanics for the airlines in Great Falls. The closest correlated job is in Denver or Seattle. These people, nevertheless, deserve to be paid under the skill for their profession,

not under the skill that puts this at a WG-9 or 10 and then pays them what people in other skills in WG-10 get in that area, with no correlation in that area of aircraft mechanics.

Mr. HENDERSON. They should be paid a national wage.

Mr. PATERNO. Under the present legislation, this would be achieved by declaring certain skills.

Mr. HENDERSON. What about activity in the Federal Government that is so widespread as the postal service, for example? Do you think they ought to be paid on a nationwide scale?

Mr. PATERNO. This is one of the toughest points you have as a union president. You take a geographic bonus or cost of living position. I would have to say yes. Yes, because functionally, what the Government does—

Mr. HENDERSON. You confuse me a little bit. Do you believe we ought to start with nationwide scales and then pay bonuses?

Mr. PATERNO. I am talking about the difference between the wage grouping and the more integrated as against the national pay scale as we have in the GS's, basically.

Mr. HENDERSON. In the first instance, you say aircraft mechanics ought to be paid nationwide. What about automotive mechanics in the postal service doing the same job in New York City and one in Atlanta, Ga.? Should they be paid the same?

Mr. PATERNO. No; I believe the present system of blue collar structure is equitable in this sense, in the sense that it does compare the job with those jobs in his area and this is not a nationally determined scale. What I am saying in the one area, American Airlines, United, are making national contracts. The effect in that industry is that particular grouping and skill of people are paid on a national basis.

Mr. HENDERSON. Let me put my question another way. If Congress were to legislate that management could set pay nationwide or on a locality basis, but they should use that which was cheaper, what would you think of that as a national policy?

Mr. PATERNO. I think you proscribe the effect of collective bargaining. I am not interested in having a Federal employee in a nonunion area suffer because somebody doesn't happen to like unions or private sector unions haven't been successful in that area. I want to negotiate with some degree of range.

Mr. HENDERSON. Perhaps I missed your basic premise. You feel in the Federal sector that pay ought to be subject to collective bargaining?

Mr. PATERNO. No; a job classification only—methodology right now. Ultimately, yes, but I don't think we have a sophisticated enough time in the union-management relationship in the Federal service to go into the large-scale economic range. I think we should experiment the full range of bargaining effectively first, in certain other areas, and gradually develop it.

Mr. HENDERSON. Let me take a minute in that regard on technicians. Would you think that in that particular area you're ready for full collective bargaining?

Mr. PATERNO. To the degree that I have established, yes.

Mr. HENDERSON. Would you feel that that ought to be a nationwide collective bargaining?

Mr. PATERNO. No; in this particular area the basic statute of initiation of these employee categories places the adjutant general as the

managing agent, so to speak, and I believe this is the point at which the bargaining has to take place. I think the statute already requires this. If you set the statute aside, could we do it nationally? Probably.

Mr. HENDERSON. Would you recommend that it be done nationally or would you negotiate from site to site or other geographical areas?

Mr. PATERNO. I would suggest that it be done on the State level in this particular function. It's close enough and small enough to be responsive to its people. Naturally, if you're in my position you would like to have it fall into your hands, but I'm not sure that you would become responsive enough to the people that you represent. I would like to see them have the power to collective bargaining that I enumerated in here.

Mr. HENDERSON. Very well. Thank you very much for your testimony this morning and your appearance.

Our next witness is Mr. John White, director, legislation and public relations, National Alliance of Postal and Federal Employees. You may have others with you that you'd like to introduce.

**STATEMENT OF JOHN WHITE, DIRECTOR, LEGISLATION AND PUBLIC RELATIONS, NATIONAL ALLIANCE OF POSTAL & FEDERAL EMPLOYEES, ACCOMPANIED BY VOTIE D. DIXON, NATIONAL SECRETARY, AND WESLEY YOUNG, NATIONAL VICE PRESIDENT**

Mr. WHITE. Chairman Henderson and distinguished members of the committee, the opportunity to testify before you this morning is deeply appreciated. There is an awareness on our part of the very high degree of public interest which has been created because of the several bills which are now pending before your august committee. The issues involved in enacting legislation designed to improve labor-management relations in the Federal service convince this union that some worthy citizens and organizations were not selected to appear personally before you because of the committee's urgent task to reconcile their appearance with the need for prompt action and the reality of the shortage of time in the waning hours of the 93d Congress. Members and officials of this predominantly black independent industrial labor union publicly applaud the sensitivity and perception of you, the committee, and your excellent staff. Because you possess these fine qualities, an organization such as the National Alliance of Postal and Federal Employees is permitted to appear and testify before you today.

Mr. Chairman, with your indulgence, a brief résumé of this union's origin, history and goals is now presented. Perhaps such a recital will aid the committee in better comprehending some of the agonies and reactions of an independent minority union, composed primarily of individuals from minority groups. As our plight is contemplated, this union's position appears similar to the embattled mythological king who cried out, "The barbarians drive me into the sea and the sea drives me back into the arms of the barbarians." On one hand, our continued existence is imperiled by the high bureaucracy which represents the executive branch of the Government and on the other we are threatened by the large Federal unions who seek a monopoly which would deprive individuals of their constitutional and human rights.

Second, reference is made to the story of Scylla and Charybdis, which further highlights our dilemma. These two monsters existed in

the fable of the "Voyage of Ulysses." Scylla was once a beautiful maiden who had been turned into a snaky monster. She dwelt in a cave high on a cliff from whence she was accustomed to thrusting out her long necks and in each of her mouths, seizing one of the crew of every vessel passing within reach. Charybdis was a gulf nearby on a level with the water. Thrice each day the water rushed into a frightful chasm and thrice was disgorged. Any vessel coming near the whirlpool when the tide was rushing in was inevitably engulfed. Neptune himself could not save it.

Third, in 1974, three boys, following their death, approached the pearly gates seeking admission to Heaven. One was Italian, another was English, and the third was a black American. St. Peter asked the first youth how to spell God. It was easily spelled G-o-d, and he passed in. The second youth was asked how to spell God and he too passed the test. The black youth stepped up and St. Peter said to him, "Boy, I can let you into Heaven if you can spell chrysanthemum." This narrative of the three boys suggests the kind of problems which confront blacks and females, and organizations which represent them.

In 1913, 61 years ago, a small group of black male postal railway clerks met at the foot of Lookout Mountain in Tennessee and organized to resist a conspiracy between Postmaster General Burleson and a craft union to eliminate black employees from the Postal Railway Service. This group soon learned that black employees in other areas of the postal service faced the same job jeopardy as they themselves, and needed help. Thus, was formed the National Alliance of Postal Employees, the first industrial union in the Federal Government, where all crafts and segments of the work force functioned under the democratic banner of unity. It was recognized by our Founding Fathers that the differences among craft employees in labor-management relations were basically as superficial as the work performance variance falsely attributed because of race, color, religion, age, and sex. The concept was embraced, 61 years ago, by this union, that all Federal employees worked for the same employer and all employee- and employer-related problems should be resolved on a basis of fairness, uniformly applied, without regarding to craft or job title.

During the years prior to 1965, thousands of pleas for help came to this union from employees and citizens who worked for Federal agencies other than the Postal Service, or who had unsuccessfully applied for employment. Those employed charged existing Federal unions with failure to represent blacks and females. They further claimed that the unions themselves practice discrimination because of color and sex. Many applicants for employment alleged, with must justification, that numerous bureaucrats empowered with the authority to hire were insensitive to human values and hostile to blacks and women.

In our national convention which was held in Los Angeles, Calif., in 1965, we amended our national charter and became the National Alliance of Postal and Federal Employees. This gave us the constitutional and legal authority to represent and organize all Federal employees. During the intervening years, great emphasis has been placed on providing Federal employees with vigorous representation in grievances, adverse actions, and equal employment opportunity complaints. Now it is recognized that the climate in which small Federal unions

have recently functioned, with diminishing freedom and recognition, is further threatened by a corollary pollutant which would deprive an employee of the right to choose a representative as well as the right to hold a job. This means that this union must and will more actively work for the passage of legislation which will provide a sound statutory base for labor-management relations affecting employees in the executive branch of the U.S. Government.

The pamphlet, "A Comparison of Executive Order 11491, as Amended, to H.R. 10700 (Mr. Henderson), H.R. 13 (Mr. Brasco) and H.R. 9784 (Mr. Ford)" which was prepared by the Office of Labor-Management Relations, U.S. Civil Service Commission, under the auspices of the Subcommittee on Manpower and Civil Service has been very helpful in denoting some of the differences between the Executive order and proposed legislation. The "Summary of Key Features of the Federal Service Labor-Management Act of 1973" as proposed by Mr. Henderson's bill, H.R. 10700, which was prepared by the Subcommittee on Manpower and Civil Service, has also been valuable to one attempting to make an analysis of pending legislation.

The committee and its staff are highly commended because of the very excellent way in which it has prepared for these hearings and you, Mr. Chairman, have conducted the hearings in the finest tradition of patience and wisdom.

Based on this union's understanding, an Executive order is an edict issued by the Nation's Chief Executive, which governs all citizens and agencies covered by its provisions. It is an unilateral order and relies solely on the discretion of the executive branch of Government for its issuance and enforcement. There is no input by the other two branches of our Government. An Executive order may be issued today and it is law; and, it may be rescinded tomorrow. A succeeding Chief Executive is not bound by the Executive orders of his predecessor. Consequently, he may rescind, amend, or retain an order issued by the former. It is the danger inherent in the unilateral concept of the Executive order which demands that this union take the position that labor-management relations should rely on sound legislative action, in lieu of the whim of a Chief Executive.

The Executive order has, on occasions, served a very valuable public purpose, in the infrequent instances when the deliberative processes of Congress have failed to keep pace with the needs of some of the people, which were consistent with the best interests of all of the people. In such cases, a bold and enlightened President may take action which removes the completeness of a void which then existed. It was an excellent tool in the repertoire of representative Government. But it is no permanent substitute for timely legislative action.

President John F. Kennedy took a momentous step in 1962 when he issued Executive Order 10988, which established the formal labor-management relations systems in the Federal Government. Either he was ahead of the sentiment which prevailed in Congress and parts of the country, or he administered one of the most artful placebos in the history of labor-management relations. Executive Order 10988, as amended, in part would strengthen any legislation which may be enacted.

Because of many crucial, controversial, and even delicate issues involved in the pending bills, the challenge and requirement to draft

precise and clear language is vital if years of confusion and litigation are to be avoided.

One of the most painful episodes in congressional history is the sage of Public Law 91-375, enacted in August of 1970 and known as the Postal Reorganization Act. The conflicting claims which have been made concerning the intent of Congress are perplexing. Perhaps, one must conclude that much language in H.R. 17070 was actually devoid of clarity, or view with skepticism some individuals, officials, and others who seemingly champion odd interpretations of congressional intent.

Over 700,000 postal employees were removed from the coverage of an Executive order in the area of employee-labor-management relations to inclusion under the provisions of Public Law 91-375. It, therefore, seems desirable to explore the relationship of language and its impact on the conveyance of intent, so as to minimize the dialog on intent.

Representatives of this union have attended all the previous hearings which have been conducted on the question of replacing the Executive order with legislation. They have talked with many officials, rank and file employees, and citizens who are not Federal employees; and the unvarying conclusion has been reached that the time has now come when legislation should be enacted to provide fair and reasonable labor-management relations in all Federal agencies.

Perhaps I should amend this last paragraph. I said at the time it was written that the sole voice which has been raised before this committee in opposition to such legislation has been by the spokesmen for the U.S. Civil Service Commission. Their testimony gave evidence that they had done a thorough job of preparing their statement, but this union has not been dissuaded from its firm belief in the need for legislation to replace the Executive order.

An overwhelming consensus exists. The time for action is now.

#### FEDERAL LABOR RELATIONS AUTHORITY

H.R. 10700, H.R. 13, and H.R. 9784 seemingly are in agreement on the need to create an authority to carry out the provisions of the proposed legislation. The bills differ in some areas, which may be fundamental, in defining the scope of the authority's function, while the Chairman of the Civil Service Commission opposes the formation of a new authority, and urges the retention of the Federal Labor Relations Council, which was established under the Executive order.

This union ardently embraces the concept of a Federal labor relations authority, staffed with qualified members, and clothed with sufficient independence to guarantee its integrity. The following is suggested:

1. The authority would consist of nine members, who would be appointed with the advice and consent of the Senate. One would be a black person, one a female and one a member of another minority group. One would be independent politically and no more than five could come from one political party.
2. A member would only be removed for just cause and would have an opportunity to answer any charges brought against him (her) preceding any adverse action. Appeal to a Federal court would be appropriate, at the option of the member.

3. A member would work solely for the authority and avoid all conflict of interest situations.

An authority (board) which is visibly made up of all segments of the American people would be a positive psychological force. It would enable working people, blacks, whites, females Democrats, Republicans, Independents and others to identify with the board. It could give hope to many Federal workers who have been disillusioned because of a cumbersome, seemingly unresponsive bureaucracy and the autocratic insensitivity displayed by some big unions.

Women, blacks, and other minorities could provide a vital additional dimension to the board, while developing expertise in its routine functions.

Board members must be insulated against the dread sycophantic syndrome of the Potomac, which deadens morality and stifles imagination. Their integrity and judgment must not be impaired. They must be independent, but they also must be accountable for carrying out the intent of Congress.

#### RECOGNITION

We find ourselves in opposition to the provisions of H.R. 10700, H.R. 13 and H.R. 9784 which would allow the authority to certify a union as the exclusive bargaining representative for a designated unit, in the absence of secret ballot elections. It is believed that the best interest of the Federal service, the employees, and the healthy democratic role of unionism require a secret ballot election.

For the purpose of recognition, units should be established solely on the basis of a community of interest among the employees involved. The size of the unit should not be a factor. Identity of common bonds, clear goals, experiences, skills and interests far outweigh the superficial notion that large units, per se, promote efficiency. Equally unacceptable, is the Civil Service Commission's espousal of large units because of the alleged burden which smaller units place on the managerial bureaucracy. The Commission calls the development of smaller units a proliferation of fragments. We claim their positions reflects an inability or unwillingness to utilize or develop the necessary tools required to do the job. The Commission's position if allowed to prevail, would diminish or destroy the equity of many employees with bona fide rights, which are deeply rooted in smaller units.

We, respectfully, disagree with the section of H.R. 13 which provides that the rights of a union which gains national exclusive recognition in an agency would supersede all prevailing contracts at lower levels of the agency. There seems to exist no sound basis for enacting legislation which could cause the cancellation of contracts which were freely and legally entered into by the appropriate parties at lower levels.

Experience gained under Executive Order 10988 shows that recognition may simultaneously exist at the national, regional, and local levels, and in three forms, exclusive, formal, and informal. Executive Order 11491 which replaced Executive Order 10988 was amended by Executive Order 11616 which also provides for different levels of recognition. Seemingly, the desire of some big unions to increase their size is coupled with a monopolistic zeal to eliminate their competitors and to take a stranglehold on the workplace. Their influence contributed to the erosion of small unions and employee rights under



Executive Order 10988 as replaced and amended. Now their cry is for more.

We strongly support section 504(A) of H.R. 13, which provides in part that "A labor organization which has been granted exclusive recognition at the local level may be granted national consultation rights," except the word "may" would be replaced by "will".

It could be very valuable for the national level of an agency to have input from a local exclusive which may not be an affiliate of the national exclusive union.

A careful analysis of section 7106 I of H.R. 10700 compels us to oppose its inclusion in legislative form. It is believed that the authority should not be empowered to combine two or more work units into a larger unit, regardless of agreement expressed by the unions and the agency involved. Units are established initially by the authority on a basis of acceptable and valid criteria, including its function as an efficient cog in achieving the agency's mission. A merger of smaller units into a larger one, when all locals are part of the same union, would be a step toward monopoly. It would make it more difficult for a smaller union to issue a challenge at election time and deprive employees of a meaningful right to choose a representative.

A change from several smaller units to one larger unit should not be allowed except under unusual circumstances. It should only be approved then if the employees involved have the right to vote "No."

Here one is reminded of one of our introductory tales about the three boys talking to St. Peter at the pearly gates. Only the little black boy had to spell the big word to enter heaven.

H.R. 9784 section 5(B) (1) provides that labor organizations shall have access at reasonable times to areas in which employees work, the right to use the employer's bulletin boards, mailboxes, and other communication media subject to reasonable regulation and the right to use the employer's facilities at reasonable times for the purpose of holding meetings, et cetera. These courtesies would be extended to all unions until such time that an exclusive union had been recognized. The section appears excellent with the exception of the cut off provision. Such an arrangement would improve communications among employees, unions, and management and should continue beyond the point of exclusive recognition. It would not derail the agency's mission and would provide democratic participation in employee-management related affairs.

#### REPRESENTATION-UNION SECURITY

The tactics of some of our big unions are sometimes beguiling. They call members of smaller unions brothers to their faces, and proceed to eliminate them, as competitors, if possible. They publicly denounce managers and employers because of alleged unfair and inhumane treatment which is imposed on subordinates and simultaneously ask managers to join them in establishing union security. They seek a monopoly on the right to represent Federal employees and would bar employment to qualified individuals who fail to pay dues or the equivalent. They tell blacks, females, and other minorities we deal with bread and butter issues, "Go to the NAACP, the NAPFE or the Equal Opportunity people, if you have a complaint about discrimination."

Those who have failed to represent all of the Federal workers now ask you to legislate a monopoly—a union shop which could enslave all of the working people.

Employees who refuse to pay dues to an exclusive union are not free loaders and deadbeats. Some pay due to this union and we are anxious to perform the service for which they have paid. Others are those people who choose not to join because that is their right, to which they owe no one an explanation for such action.

In the several small units where this union has negotiated contracts, we have not resisted the right of an employee to choose a representative. We believe it is healthy and that it is a recognized basic human right.

Mr. Chairman, the occasional reference which has been made to blacks, females, and other minorities during this testimony has not been designed to inflame the passions. Neither has it been a special pleading for one group at the expense of other Federal employees, who are, for the most part, all Americans. We are convinced that what this union espouses will aid in building a stronger America if this concept is more fully embraced.

It appears vital that any bill which emanates from this committee will include language which guarantees the right to employees to join or refrain from joining a union. This should be coupled with the unimpaired right to choose an individual representative in grievance and adverse action cases.

#### THE RIGHT TO STRIKE

The question of giving legal sanction to the right of Federal employees to withhold their services, because of a labor dispute with their employer, has long been a matter of controversy. It is a subject which continues to inflame passions and to stir deep misgivings among many individuals, who are normally inexcitable in their daily functions. Notwithstanding these factors, it is our duty to take a stand and we do.

Absence of the legal right to strike places a union negotiator at the bargaining table in the position of a toothless and clawless tiger in a jungle filled with vicious wild beasts. Its survival must depend on factors other than its ability to trade bite for bite and claw for claw. Thus, the Federal union negotiator has in the past come to the bargaining table as a collective beggar and not as a collective bargainer. Federal managers know that he cannot stop the works, and they have treated him and his followers accordingly.

It appears that the procedure outlined in section 9 of H.R. 9784 presents a modest but workable plan which would give a union the right to exercise its strike option after prescribed administrative channels have been used. This means that the dispute would go through the Federal Mediation and Conciliation Service, then to fact-finding for advisory recommendations before a strike could be called. The union could agree to binding recommendations by the factfinders which would nullify its right to strike.

Responsible unions, such as the Alliance, will act responsibly, but they must be allowed to come to the bargaining table as equals, if good faith bargaining is to take place.

We believe that enactment of a proposal such as this one would sound public policy.

SUPERSEDURE

Mr. Chairman, this part of our statement is being prepared after sitting through the committee's hearing on Tuesday, July 16, after which the impact of your committee's huge task was reassessed. The flow of words, in written and oral form, in your direction has been monumental. The thought of what you have done and what you need to do has been sobering.

Perhaps, at this moment, a current popular song reflects part of our thoughts and several words from a renowned playwright depict the other:

1. In the song, the vocalist sings, "You can't be a beacon if your light don't shine." The scenario in your hearings causes some doubt as to the visibility of a mere beacon and is conducive to modesty. At best, we may hope to become a mere ray of light in this highly illuminated setting.

2. In Hamlet, the melancholy Dane, while contemplating suicide, raised the question as to whether it was better to suffer the slings and arrows of outrageous fortune or to fly to a land which we know not of. He said, "Conscience does make cowards of us all." The course which you pursue in the proposed legislation is not entirely uncharted, but it requires thoughtful action.

It is a matter of grave concern to this union as to the possibility of the enactment of language which would give too much shared power to agencies and unions. Such authority could seriously damage employee rights and work counter to sound public purpose.

Certain policies, regulations, and laws must be continued until changed by an act of Congress, perhaps as a later amendment to the pending legislation. Experiences of this union under the Postal Reorganization Act of 1970 leave no illusion as to the capacity of big unions and an agency to conspire against small unions and the very individuals whom they profess to represent.

In the areas of pay and benefits, a floor must be set to guarantee that employees will not sink below the level which exists on the effective date of the legislation.

As an example, under the Postal Reorganization Act of 1970, the provisions covering health benefits remained the same, the Postal Service continued to pay approximately 40 percent of the package, while the employee paid the remaining 60 percent, except the union and the Postal Service could agree that the employer's payment would increase and the employee's decrease.

It also seems that some means must be found to retain certain policies which have been established by the Civil Service Commission, which rest on a solid base.

As an example, the Commission years ago promulgated a regulation which requires an employer to give a Federal employee, who is a veteran, 24 hours' prior notice in cases of a proposed emergency suspension. The veteran must also be given an opportunity to show cause why the action should not be taken.

Now the U.S. Postal Service, in collusion with the craft unions, is causing the Commission to seriously consider changing this policy which protects veterans. The right of other postal employees to answer before adverse action is imposed has already been bargained away

for a mess of pottage. Now a demand is being strongly pushed to downgrade the rights of our veterans.

If the Civil Service Commission changes this regulation, unions in the Postal Service and all Federal agencies would be able to contract away a veteran's right to reply.

This union will never become a party to any action which would dilute the already inadequate rights of our veterans in the areas of employment, education, housing, health, et cetera.

It becomes a matter of cynical concern when it is noted that as more blacks are going into the Armed Forces than ever before, the backlash of white majority antagonism becomes increasingly evident. It seemed all right for blacks to die on foreign soil for our country, out of proportion to their percentage of the population; but, those who lived to become veterans painfully recognized that they had a problem, even in the Federal Government, when they came back home. Such veterans, particularly, blacks, women, and other minorities, cannot place their reliance on representation by unions who apparently have been and are bedmates of the discriminators.

#### GRIEVANCE

The definition of a grievance, from our view, is any dissatisfaction which an employee experiences as a part of the employee's working conditions or job related situation, which the employer possesses the capacity to correct, jointly with the participation of the employee or on a unilateral basis by management. This would include any proposed disciplinary action against the employee.

Any grievance procedure which is negotiated by a union and the employer should be available for use by any employee, regardless of his nonaffiliation with the exclusive union. The employee should be able to represent himself or herself or choose an individual representative to assist him. The employee should possess the specific right to work out any problem with the employer because of his rights as an individual. It is not desirable that the negotiated procedure should be the only process available to an employee in attempting to resolve a job related problem.

A union monopoly will not serve a positive public purpose and would not promote governmental efficiency and tranquility.

#### CONFLICT OF INTEREST

The question of so-called managerial, professional and such employees' eligibility to become members and to actively participate in a rank and file union is perhaps a difficult one to resolve. Many pros and cons have already been placed in the record of these hearings, and it may be impossible to add a new opinion at this point. Therefore, no further persuasion is now attempted.

It is believed that in gray areas, employers should not have the right to unilaterally and capriciously decide that certain employees are ineligible to become union members because of their alleged function in the management hierarchy. In such situations union members and the employees of controversy should be allowed, by separate secret ballot, vote to decide the issue as to conflict of interest and membership.

Mr. Chairman, this concludes our written testimony, with the can-

did admission that all highly important aspects of the pending bills have not received written comment. All issues involved have received thorough study and we do have opinions on most. In several instances we realize that our position has not been engraved in marble. Our instincts, judgment and experience tell us what is best, but we recognize that we are not infallible.

The courtesy which you have extended to us is deeply appreciated. We will be glad to attempt to answer any questions.

Mr. HENDERSON. Thank you very much, Mr. White. On the final page of your testimony you state that employers should not have the right to unilaterally and capriciously decide that certain employees are ineligible to become union members.

Are you talking about decisions such as who are supervisors and who are not supervisors?

Mr. WHITE. Yes, Mr. Chairman. In sitting through your hearings prior to today this question has been discussed quite a bit and we have reason to know from experience and the reading and listening to others discuss it that there are times we believe that management makes a unilateral decision that this is a member of management; he's on the management team; and therefore he or she may not become a member of the rank and file union, when the unit has exclusive recognition.

We believe that this is a subterfuge. We believe or share the views which have been expressed by others who have appeared at this table on this question that many people who are called a part of the management team are merely messenger carriers. They merely carry out orders which have been given by higher-ups at the decisionmaking level and passed down through channels of supervision to them. They are the unprotected people. They need some assistance in opposing some of the present tactics of the actual policymakers and the managers who really make the decisions and set the policies.

We believe that individuals who feel that they have interests that are akin to the rank and file employee in a union should have the right to vote by secret ballot as to whether they should be included in the union and that the union members would vote by secret ballot whether or not they wish to accept them or reject them. I don't know whether I have been clear or not.

Mr. HENDERSON. Now you also advocate the unimpaired right of the employee to choose a representative in a grievance and you state that you have not resisted this in your negotiating agreements.

Could you provide us an insight into why you adopt this view?

Mr. WHITE. Mr. Chairman, in our testimony we referred to the Executive order which exists and the first one which was promulgated by President Kennedy. At that time, under the Executive order, although we negotiated contracts and I had the pleasure and experience of negotiating several in Baltimore, the overriding picture under the very grievance procedure that was negotiated by the postal unions at the national level—gave the employee and the exclusive union the right to choose a representative using the grievance procedure, whether he was a member of the union or not, but it gave the union representative a right to be present and to make a statement under certain conditions. But he could use the same procedure that they negotiated and that's why we feel that this will not impair management's right to

manage. Mr. Chairman, on the question of race and sex, which we have commented on quite a bit, we believe that the plight of black employees is synonymous with the rights of all employees. They may be nonunion members but they are American citizens and they are employees who perform well on the job. When a union becomes buddies with the managers, and they impose a monopoly which deprives an employee of the right to choose a representative to best protect his job rights and interests it is not conducive to efficient operations.

We feel that this is not conducive to the best interests of Federal employees.

Mr. HENDERSON. Thank you very much, Mr. White. Your statement has been well presented and will be very helpful to us in our deliberations.

Mr. WHITE. Thank you very much, Mr. Chairman.

Mr. HENDERSON. Our next witness is Mr. Arthur McLoughlin, executive secretary of the Overseas Education Association. It's our pleasure to welcome you this morning, Mr. McLoughlin, and I will ask unanimous consent that your entire statement be entered in the record after your presentation.

**STATEMENT OF ARTHUR McLOUGHLIN, EXECUTIVE SECRETARY,  
OVERSEAS EDUCATION ASSOCIATION**

Mr. McLOUGHLIN. Mr. Chairman, with me this morning is Mr. Donald Walker, who is the manager of negotiation research for the National Education Association.

Mr. HENDERSON. We welcome you, sir.

Mr. McLOUGHLIN. I do concur with putting into the record the statement in its entirety and this morning I would prefer not to read directly from that statement except for some isolated paragraphs that I will indicate.

Mr. HENDERSON. Very well, sir.

Mr. McLOUGHLIN. The question may come up why this testimony aims only at H.R. 9784 and does not mention the other two bills. The reason is simple. From our point of view, we feel that 9784 goes the farthest from the system as it is presently administered under the Executive order and we would like to see a bill in this regard.

Unlike some of our fellow compatriots who have given testimony here, we feel that we are totally ready to fully enter the arena of collective bargaining. Not unlike the gladiators of ancient Rome, we, too, realize the full implications of entering that arena. However, we are prepared to sacrifice an absolute lower limit of benefits and protections now accorded Federal employees in order that to become an equal partner in process of determination of our terms and conditions of employment.

Earlier this spring I appeared before another subcommittee of the Post Office and Civil Service Committee speaking on legislation designed to force the Department of Defense to comply with public law previously passed. That, coupled with many, many instances of limits imposed on our ability to fully represent the teachers in the overseas schools, leads us to the position that we do need a new and stronger collective bargaining process with an opportunity for determination of our terms of conditions on more equal basis.

I'd like to concentrate on four areas here this morning, three of which are fully set out beginning on page 6 of our text. The areas and scope of negotiation, resolving bargaining impasses and union security. But before discussing those issues, there is an additional point not referenced in the written statement that I would like to offer some comments on.

That issue is the definition—and other groups including our immediate predecessors have spoken on this—of supervisor. We are directly and adversely affected by the interpretation of supervisor as presently put forth in the order. This takes place in two forms. We have one group of employees that perform pseudo supervisory duties. They work in the dormitories attached to a number of high schools in Europe where students must come from far-out locations and live. There is a person in charge of this dormitory and is titled a dormitory supervisor. This person has the responsibility in assignment of duties, making out schedules and for the overall general duties to effect a smooth operation. However, the person does not have the full authority to promote, discharge, hire, fire or to effectively evaluate the employees under their jurisdiction. That is reserved to the building principal; the principal of that complex, who is a definite management team member.

We need a change in the definition of supervisor. There is provision in 9784 to deal with this issue in that there is a section dealing with the exclusion of firefighters and people in education. We greatly support that feature of the bill because of the recent rulings of the FLRC, in both the China Lake and the Mare Island cases dealing with inclusion of fire captains in the unit.

I will now move back to the text: directly to the scope of bargaining, but looking at it from the point of view of the limits imposed by the order. Section 11 (B) right now eliminates a number of things from the process of negotiation.

In October of 1970 the Council conducted a review of the Executive order and its published report there were some 14 items that were determined not appropriate for action as part of that review after careful study and consideration was given to them. Three items stand out as far as we are concerned in this regard: item 6 which called for a further restricting of agency regulatory authority as it affects the scope of negotiations; item 7 which provided for redefining the scope of negotiation with respect to assignment of personnel; and item 10 which dealt with processing negotiability issues as a refusal to bargain under unfair labor practice procedures.

The problems were there. They were brought out in a previous review. They have been brought out again in the present review of the Executive order late last year and early this year. And yet previous testimony by the Chairman of the Federal Labor Relations Council indicates things are going smoothly and we don't need to expand upon these issues.

We feel we do need to expand upon them and as we point out in the second paragraph on page 6 of the written testimony under H.R. 9784 an agency and organization would be obligated to bargain in regard to "the terms and conditions of employment and other matters of mutual concern relating thereto." We believe this scope would be more effective in dealing with the concerns of the employees. Collective bargaining in the public sector has been marked by a high degree of in-

volvement of salaried professionals who view such bargaining as a vehicle for securing professional standards, goals, and aspirations. A teacher, for example, having committed himself or herself to a career of socially valuable service and having invested years in preparation and perhaps postgraduate study while teaching, has a special identification with the standards of the practice and the quality of the service provided to the "clientele." Thus, teachers seek to participate in decision-making with respect to teaching methods, curriculum content, educational facilities, and other matters designed to change the nature or improve the quality of the educational service being given to the children.

The answer that we have faced in previous sessions of bargaining relations has been that this falls within the excludable realm of section 11 (B) insofar as these activities describe the mission of the agency or the activity of the agency, and therefore are nonnegotiable.

In the area of impasse resolution many comments have been made and we certainly support those comments. We feel the right to strike should be included in any legislation passed. And, again, we talk about about the right to strike as a lever to provide equality at the bargaining table.

The comment has been made that many unions don't have the resources to sustain a strike. Perhaps this is true. But at any rate, very few unions or members of unions that I'm aware of wish to go on strike. Usually, that's the last thing in the mind of teachers and other public employees. But without the lever we have seen no substitute that can provide equality at the bargaining table.

There are people that say that this is against the public interest. Well, that's true to a certain extent if it obstructs the public in its ability to go about its everyday business. We heard testimony earlier this morning where a right to strike was acknowledged as far as private employment was concerned but that public employees should be denied this right because they can tie up the hands of the Government. In giving that testimony Mr. Metcalf did recognize the right of private employees.

Let's take a look for a moment, if I may, at the area in which Mr. Metcalf has his business relationships and without making too much of a pun of it, I would say that a strike by taxi drivers in the District of Columbia would do more to impede the business of this Government than the strike by teachers in Nashville, Tenn. or Heidelberg, Germany. Our written testimony refers to many types of situations where a strike by private employees does more to impede the processes of government than a particular strike by a group of employees within the Government.

Another cry that we have heard and has been given in testimony by some of our colleagues in the representation business here is perhaps we're not ready to assume the full responsibility. I have heard that cry many times and as a history teacher I have experienced that cry in the classroom textbooks as emanating from those who sought to oppress, and it was the particular cry of the colonial period in the history of our civilization. I do recall that under the policy of manifest destiny we did extend our borders out into the Pacific, to a group of islands and impose upon those islands a different type of government than they previously had. Those islands today make up the State of Hawaii.



Hawaii has just recently, as a State, passed a very modern and progressive collective bargaining law which, among other things, gives their employees under certain conditions the right to strike. Now if Hawaii could go from a colonial power to a State passing such progressive legislation in the period of time that it has, I cannot be convinced that public employees who have been serving the Federal Government in the United States for a longer period of time are not yet in a position to assume full responsibilities under a wide range of collective bargaining activities.

The last comment or last topic I'd like to comment on is the union security provision. It is extremely difficult under a condition where there is an imposition to represent every member of a given bargaining unit on an equal basis to be precluded from establishing some obligation on the part of the member of that bargaining unit to at least support the activities of the representative agent in a financial way. I'm not, and the people I represent are not in favor of mandatory unionization insofar as every person of a unit that is eligible be forced to join an organization. That certainly is a contradiction of their constitutional rights.

I do not view it to be a denial of their constitutional rights, however, to expect that every person who is receiving a benefit partake in the support of activities leading to the receipt of that benefit.

In conclusion I would prevail upon you in your deliberations in looking at the aspects that we and other groups have mentioned here, that you do as one group has suggested earlier last month, that is to consider excluding the Department of Defense employees from consideration under any collective bargaining law.

Thank you.

Mr. HENDERSON. Thank you very much.

What percentage of our overseas teachers belong to unions?

Mr. McLOUGHLIN. About two-thirds. One-third of the teachers are wives of military personnel stationed overseas and as such they have not seen to this point a particular need for membership within an organization.

Mr. HENDERSON. The effect of H.R. 9784 would permit supervisors and nonsupervisors to be in the same unit of recognition. In order to understand your support of that bill, could you tell who you see as responsible for carrying out the contents of the negotiating agreement or enforcing an agency rule among the rank-and-file employee?

Mr. McLOUGHLIN. As far as teachers would be concerned, I would say that that's a responsibility of a building principal or anyone in a higher position. I do not see that in relationship to other people who perform pseudo functions.

Let me, if I may, for a moment expand on this point. We did make an extensive submission to the FLRC in regard to the possible development within the DOD structure of a cadre of "master teachers." I cannot give you the complete definition because that concept has not yet been developed fully.

But basically, it would be a situation in which a teacher would be giving some sort of instruction and direction to either fellow teachers or to perhaps paraprofessionals or combinations thereof. Under the decisions that I quoted before of the Federal Labor Relations Council if a person performs one of the functions as specified in the order now,

then that person is a supervisor; and certainly there would be some conflicts here as these people would be performing at least one or more of those types of functions and yet they are not supervisors. It's the same way with a department chairman within a high school or a grade level chairman at the elementary level.

Mr. HENDERSON. In discussing the resolution on impasses that compulsory binding arbitration is likely to retard a give-and-take inherent in the bargaining process, you stated your support of H.R. 9784 which has a binding fact finding of recommendations as one means of settling impasses. How do you reconcile those views and can you elaborate on your position?

Mr. McLoughlin. What we are saying is that we should have an option to choose if we desire a binding commitment, but that it not be enforced in its entirety so that if we know when we come to the table that no matter what we do a third party is going to come in and make the decision for us, then there's no necessity to bargain in good faith. Holding something for the factfinding or the arbitrator becomes more of a reality under that situation. Most often I would assume that we would choose in a real knock-down, drag-out situation the binding arbitration option at the point that we have gone to the factfinding as opposed to wanting to exercise the option to strike.

Mr. HENDERSON. Very good. We thank you for your testimony and your appearance this morning, Mr. McLoughlin.

[The prepared statement submitted by Mr. McLoughlin follows:]

PREPARED STATEMENT OF ARTHUR McLOUGHLIN, EXECUTIVE SECRETARY, OVERSEAS  
EDUCATION ASSOCIATION

Mr. Chairman and members of the subcommittee, I am Arthur McLoughlin, Executive Secretary of the Overseas Education Association, an affiliate of the National Education Association.

The National Education Association, along with its State and local affiliates, represents the interests of nearly two million teachers throughout the United States and on overseas military bases around the world. The Overseas Education Association represents the interests of nearly 6,000 teachers in both collective bargaining relationships and in national consultations with the Department of Defense. Through OEA and the National Council of Bureau of Indian Affairs Educators, the NEA represents more than 7,000 teachers employed by the federal government.

Because of NEA's experience as a representative of teachers under various state statutes and under federal Executive Order 11491, we believe the NEA is in a position to provide the type of input which will assist this Committee in its deliberations.

At the outset, we would refer the Committee to the testimony of Mr. Ralph Flynn, Executive Director of the Coalition of American Public Employees, which was presented to this Committee on June 12. As a member of the Coalition, the NEA endorses the positions taken by Mr. Flynn. Further, we refer the Committee to the testimony and position paper of Mr. Vincent Connery, President of the National Treasury Employees Union, another member organization of the Coalition. We believe that the information supplied by Mr. Connery provides this Committee with ample evidence of the disastrous results of the current Executive Order and the need for the adoption of a statute—more specifically, the need for the adoption of H.R. 9784. However, rather than reiterate the points made by Mr. Flynn and Mr. Connery, we will speak specifically on behalf of teachers and why we, as teachers, support H.R. 9784.

I. NEED FOR FEDERAL STATUTE

During the past five years, as NEA and its affiliated associations have sought both initial and improved legislation to require collective bargaining between state and local governments and their employees, not once have we considered an

appropriate alternative to such legislation to be an administrative order issued by the chief executive officer. Similarly, the NEA believes that a federal executive order signed by the President is an inadequate process for the establishment of the rights of federal employees.

This approach is, by its very nature, inconsistent with the normal process of the federal government, in which primary responsibility for the creation of federal agencies, the enactment of federal programs, and the appropriation of federal monies rests with the Congress. Congress should then also be responsible for the adoption of statutory guidelines under which federal employees and agencies negotiate. To leave this important matter to administrative fiat is, we believe, an abdication of Congressional responsibility.

Second, the Executive Order—even after a number of reviews and amendments—still contains so many deficiencies that further revisions of the Order would not produce the needed results. Indeed, Chairman Hampton's comments before this Committee clearly indicate that little if anything will be done to expand the opportunities for true collective bargaining rights for federal employees under the order. Specifically, we would list the following areas which need legislative remedies.

1. Unlike the National Labor Relations Act which established an impartial Board for administration of the Act and the review of unfair labor practice, the administration of the Executive Order is placed under the control of the Federal Labor Relations Council. This Council consists of the Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and the Secretary of Labor. It cannot be said that the individuals holding these positions are impartial regarding the administration of the Order. Rather, they are representatives of management, the federal government, who are responsible to the Executive Office itself.

2. Also unlike the National Labor Relations Act which authorized judicial review of Board decisions, the Executive Order does not provide any review. Although allegations that the Council had exceeded its scope of authority could be presented to a court, no review could be had in a case where the Council had made its decision in an arbitrary or capricious manner or had made a decision which was not based on substantial evidence.

Up to this point I have dealt with the need for a statutory approach to the collective bargaining rights of federal employees. The next question is, what provisions should be contained in this statute? It is not possible in the time allotted to discuss all of the matters which warrant consideration. Accordingly, I will focus upon the following three areas, the handling of which will determine the effectiveness of the system:

- (1) scope of negotiation; (2) resolution of negotiation impasse; and (3) union security.

#### I. SCOPE OF NEGOTIATION

Under the Executive Order, an agency and a labor organization are required to meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions. However, precluded from the negotiable subjects are "matters with respect to the mission of an agency; its budget; its organization; the number of employees; the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices." There have been numerous cases, too many to mention, where this management rights clause has been used to prevent discussions of working conditions which are of vital importance to the employees.

Under H.R. 9784 an agency and organization would be obligated to bargain in regard to "the terms and conditions of employment and other matters of mutual concern relating thereto." We believe this scope would be more effective in dealing with the concerns of the employees. Collective bargaining in the public sector has been marked by a high degree of involvement of salaried professionals who view such bargaining as a vehicle for securing professional standards, goals, and aspirations. A teacher, for example, having committed himself or herself to a career of socially valuable service and having invested years in preparation and perhaps post-graduate study while teaching, has a special identification with the standards of the practice and the quality of the service provided to the "clientele". Thus, teachers seek to participate in decision-making with respect to teaching methods, curriculum content, educational facilities, and other matters designed to change the nature or improve the quality of the educational service being given to the children.

Proposals of the foregoing type frequently are resisted by agencies who contend that they exceed the scope of legitimate employee concern and intrude into the area of "management policy". We believe, however, that it is in regard to precisely these types of matters that teachers—with their special knowledge and competence—can make their most valuable contributions.

Furthermore, the procedure under the Executive Order is complicated and lends itself to unreasonable types of resistance by the agencies. Let me give you one example of this type of resistance. In June, 1973, the OEA unit in Europe negotiated a contract with USDESEA, the educational activity of the Department of Army in Europe. The teachers sought negotiation of preparation periods for elementary teachers. The activity refused to negotiate regarding this issue, claiming it was not within the scope of bargaining set forth in Section 11b of the Order. The remaining issues were agreed upon and the issue of preparation periods was submitted to the Department of the Army for a determination as to its negotiability. The Army held that the issue was indeed a proper subject of bargaining but the activity appealed that decision to the Department of Defense. Now, more than one year later, the activity has appealed the Department of Defense's positive ruling and the matter has still not even reached the final arbiter, the Federal Labor Relations Council.

We believe this type of resistance through delay tactics would be cured through the procedures set forth in H.R. 9784.

## II. RESOLVING BARGAINING IMPASSES

Next, I would like to comment on the question of bargaining impasses because we believe that the manner in which this is handled will largely determine the effectiveness of any system of collective bargaining.

One alternative which has been suggested is to provide for compulsory binding arbitration of all bargaining impasses. We are opposed to this approach since we feel that, among other things, compulsory binding arbitration is likely to retard the give and take inherent in the bargaining process. Why should the parties make a sincere effort to compromise during bargaining when by doing so they may prejudice their respective positions if and when they find themselves before an arbitrator?

Another alternative is to legalize the strike. We support this approach and believe that it provides the most effective basis for dealing with the question of bargaining impasses. The problem, as we see it, is to achieve an appropriate balance—to develop a system that provides for the equitable resolution of employer-employee disputes; that minimizes the need for strikes; and that protects the public interest if and when strikes do occur. Rhetoric, opinion, and emotion add very little. There have now been several years of experience and we should begin by looking at what we have learned. Certain facts emerge:

(a) The strikes that do occur are often the fault of the employer; sometimes the fault of both the employer and the employee organization; and I must confess that on occasion they are solely the fault of the employee organization.

(b) Penalties and prohibitions do not deter public employee strikes. When employees feel sufficiently aggrieved and have no alternative avenue of redress they will strike regardless of the penalties.

(c) Agencies have frequently demonstrated a lack of any real desire to engage in good faith bargaining. They often refuse to make concessions because the fear of the strike has been removed.

(d) Not all strikes by public employees create an emergency or result in chaos. Some public services can be discontinued for considerable periods of time without seriously disrupting the community. School teachers, for example, do not perform functions directly affecting the public health or safety. As a result, a disruption of their services for a temporary time probably would not have a serious effect on the public.

(e) The assumption that the harm to the community is necessarily greater in public employee strikes than it is in private employee strikes simply is not true. This is evident from the fact that certain public employees are prohibited from withholding their services while employees of private concerns performing precisely the same functions are entitled to do so.

Employees of private industry and business especially in the areas of communications, construction and data processing, to name a few, are free to strike their employer even though the employer is performing a function for the federal government on a sub-contract basis. It is inconceivable that employees of the federal government doing the same or similar work would more gravely affect

the public interest by striking than would their counterparts working for private interests under government contracts.

The same would hold true for teachers. A strike by teachers in the overseas schools would not have a more deleterious effect than a strike by teachers serving children of federal employees in a district within the state of Hawaii, where a strike by teachers is legal under certain circumstances.

Not only are certain permitted private sector strikes at least as damaging as certain public sector strikes, but many private sector strikes, such as those in the fuel oil, coal, or milk processing industries, would have a significantly greater adverse effect on the public health or safety than would strikes by many public employees.

(f) Judges are in the best position to assess the impact of any particular strike on the public interest and to fashion an appropriate remedy to deal with the situation. We are aware of several instances in which a judge has indicated that he considered an injunction unnecessary and undesirable but felt legally compelled to issue one.

These facts suggest that an *a priori* ban on all federal or nonfederal employee strikes regardless of circumstances and regardless of impact is not only inequitable and arguably unconstitutional but is, in addition, empirically unsound. They point to a need for flexibility—for a system which provides a motive for good faith collective bargaining; which allows for the assessment of relative fault if bargaining breaks down and a strike occurs; and which permits the development of a remedy that is appropriate to the facts in each case.

We believe that the procedure provided in H.R. 9784 would produce these results. To begin with, it would eliminate the basic difficulty inherent in a system of compulsory binding arbitration of all bargaining impasses. Since the parties would not be committed in advance to binding arbitration, the incentive to bargain in good faith would remain, and the parties would be encouraged to avoid impasse. Moreover, if an impasse should occur the availability of binding arbitration option would be a strong inducement to the employee organization to waive its right to strike. Even if the employee organization chose not to have binding arbitration, both parties would be under severe pressure to accept the advisory recommendations—the employee organization because of the possible loss of wages to its members and the risk that the strike still might be enjoined; the agency because of the element of doubt as to whether and/or when an injunction might ultimately issue if the employees struck. Finally, if a strike were to take place the public interest would not be ignored. Acts during the strike would be prohibited if they presented a clear and present danger to the public health or safety.

### III. UNION SECURITY

Finally, we would note that under both the Executive Order and H.R. 9784 the organization which has gained the support of the majority of the employees becomes the exclusive representative of the employees.

We might note in this connection that with exclusive status, an organization obtains not only rights but certain obligations as well—principally, the obligation to represent all members of the negotiating unit equally without regard to organizational membership. It is for this reason that we support H.R. 9784's requirement that those members of the negotiating unit who are not members of the recognized organization to pay to such organization an amount equal to the dues and assessments.

### CONCLUSION

In conclusion, I would like to emphasize a point that I made earlier. Although I have directed my comments essentially to collective bargaining between teachers and agencies, this has been done for illustrative purposes only. We join with the other members of the Coalition of American Public Employees in seeking a federal statute which will establish an equitable working relationship between the federal government and its employees and which will be consistent with the effective operation of government. The NEA believes that H.R. 9784 would do this and it has our wholehearted support.

Mr. HENDERSON. Our last witness is Carl Megel, legislative director, American Federation of Teachers, AFL-CIO. We are delighted to welcome you this morning.

**STATEMENT OF CARL J. MEGEL, DIRECTOR, DEPARTMENT OF  
LEGISLATION, AMERICAN FEDERATION OF TEACHERS, AFL-CIO**

Mr. MEGEL. Mr. Chairman, in the interest of time I will ask that the presentation which I have prepared be inserted in the record together with the supplementary statement which I just gave to you to be included as an addition to my prepared statement.

In addition to that, Mr. Chairman, I wish to present to you and the committee, but not for inclusion in the record because of its voluminous content, the booklet containing the collective bargaining laws for public employees in the various States of the United States which I have compiled. This is the third compilation, and is complete through 1972. We are in the process of compiling a fourth edition which will be available about September 15, and will be complete to date. I will be glad to supply the committee with a full set of the revised edition at that time. There are many items in State collective bargaining laws that could be helpful to the committee.

Mr. HENDERSON. The committee would be very glad to receive them and we thank you for the presentation here and I will ask unanimous consent that your statement may be entered in the record along with your supplemental statement.

**STATEMENT OF CARL J. MEGEL, DIRECTOR, DEPARTMENT OF LEGISLATION,  
AMERICAN FEDERATION OF TEACHERS, AFL-CIO**

Mr. Chairman and members of the committee, my name is Carl J. Megel. I am the Director of Legislation for the American Federation of Teachers, AFL-CIO, a National Teachers Union of more than 400,000 classroom teachers.

Our organization embraces more than 2,000 teacher locals including the Department of Defense Overseas Dependent Schools. There are before this committee three bills. Each of these bills is designed to establish a form of labor-management relations in the federal service based upon recognition and collective bargaining which already exists in the private economic sector under the National Labor Relations Act.

Our particular concern at this time is in reference to the American Federation of Teachers members in our overseas dependent schools. There are at the present time in excess of 6,000 overseas teachers of which approximately 2,000 are members of the AFT.

In the late 1950's and early 1960's, many teachers in overseas schools wrote to me indicating their desire to affiliate with the American Federation of Teachers. It was my privilege at that time to be serving as President of the American Federation of Teachers, a position which I held for 12 years.

In all communications at that time to these overseas teacher leaders, I indicated that in my opinion it would not be to their advantage to affiliate with the American Federation of Teachers since we would not be able to provide the kind of services or assistance which would satisfactorily compensate for their payment of dues. I made these statements in the knowledge that at that time, there existed no procedures for legalized collective bargaining and negotiations.

However, in 1962, when President John F. Kennedy issued Executive Order 10988, this entire picture changed tremendously. The Executive Order allowed federal employees to organize into unions of their choice and to enter into negotiations with their employer, the various agencies of the United States Government.

Following the issuance of this Executive Order, I wrote to our contacts in Europe and Asia and advised them that it would now be possible to grant charters to the various school jurisdictions in the event they cared to so petition.

The numerous charters which we granted since that time have operated even though somewhat ineffectually under the terminology of Executive Order 10988 and later under Executive Order 11491. There now are being considered

by this committee the bills to place labor-management relations upon a statutory foundation. We appreciate very much the opportunity to present our views on this matter.

The American Federation of Teachers was a pioneer in establishing collective bargaining for teachers. In our proposals we maintained that the collective bargaining process requires an election officially approved by the employers to determine democratically the bargaining agent to represent the employees. The bargaining agent so determined shall then enter into negotiations with their employer for good faith bargaining to arrive at a written contract mutually agreed to.

The first written teachers contract was negotiated in 1938 when the Maywood, Illinois Proviso Council of the West Suburban Teachers Union Local 571 entered into a functioning collective bargaining agreement with its Board of Education. This contract, obtained without an election to determine the collective bargaining agent, has been renewed, improved and continues to be in effect to this date.

Early in 1953 as the newly elected president of the American Federation of Teachers, I stated: "Only through establishment of successful collective bargaining practices can America's teachers attain the salary, status and stature necessary to teach effectively for living in a space age society." To my knowledge, this was the first official call by any national teacher leader for collective bargaining between teachers and their employers, the various boards of education.

Even though collective bargaining had now become an established American Federation of Teachers' goal, it was not until 1957 that another local of the American Federation of Teachers was able to attain this objective. It was during this year that the East St. Louis, Illinois Federation of Teachers, was able to win an election and negotiate a written contract. To my knowledge, this was the first time that a board of education authorized an election to determine a bargaining agent and agreed to negotiate a contract with the winner of the election.

The East St. Louis Federation election was followed in 1960 and 1961 by the United Federation of Teachers of New York, AFT Local No. 2, which embarked upon a successful collective bargaining campaign resulting in a written contract. This contract contained the most far reaching provisions that have ever been written into a single teacher pact. The event electrified the education and labor community beyond our fondest expectations. Teachers everywhere were inspired with new hope and new vision.

Collective bargaining is a process which can be of great value to teachers, to students and to the general public. A bargaining agent dedicated to reform teaching and working conditions can use the process to good advantage.

In spite of some efforts at maintaining the status quo, our overseas teacher representatives without the benefits of a labor-management law have made certain gains in their negotiations which relate to salary, security and grievance procedures.

However, the American Federation of Teachers is desirous of obtaining basic principles and procedures of labor-management relations that will assure our federally employed teachers the same recognition and collective bargaining rights that are now enjoyed in the private economic sector under the National Labor Relations Act, as amended. Such a system based on union recognition and collective bargaining already exists for the United States Postal Service employees as a result of the Postal Reorganization Act of 1970.

A reluctance to advocate this course has been the fear that such legislation might involve the loss of the right to withhold services. We concede that the government has the right to intervene when strikes constitute a direct and present danger to public safety. We hold that employees, teachers included, should work only under terms and conditions agreed to through negotiations with the employer.

We firmly believe in the premise of "no contract, no work". We have strong support in this position announced recently by Mr. Ussery, Assistant to President Nixon, who states that he favors "full collective bargaining rights for federal employees, including the right to strike." He further states that there is "precious little real collective bargaining in the federal arena and far too much collective begging". Certainly, teachers are prime examples of employees who qualify under the terminology of "collective begging".

The injustice can be rectified by inclusion under the Provisions of the National Labor Relations Act. We respectfully ask your serious consideration for such inclusion.

We thank the Committee for the privilege of making known our point of view.

SUPPLEMENTAL STATEMENT SUBMITTED BY MR. CARL J. MEGEL

As stated previously, the American Federation of Teachers pioneered collective bargaining for teachers. We maintained that teachers had the right to organize into unions of their choice without coercion or intimidation; that they had the right to democratically designate a bargaining agent; and that the bargaining agent had the right to enter into good faith bargaining with their employer, the Board of Education, or in the case of overseas teachers, their education directors.

In support of these premises, either of the bills before this Committee would be preferable rather than the status quo. Our major concern is to establish for teachers the same rights and privileges now afforded to the economic sector under the National Labor Relations Act.

To do so would rule out the invidious injunction by which a judge in a court of law, instead of insisting upon negotiations to settle grievances, has ordered jail sentences and fines for teachers.

Within the past several years New York teachers including its President, Albert Shanker, have served jail sentences and a fine of more than \$200,000. In Newark, New Jersey, 193 teachers were required to serve a 10-day jail sentence and the President of the American Federation of Teachers, David Selden, was incarcerated for more than 90 days. Additionally, the teachers were fined \$193,000. In Joliet and Cicero, Illinois, in Kansas City, Missouri and in other areas of our country, teachers have been jailed or fined or both for advocating what should be their democratic right. Either of the bills before us would eliminate these discriminatory injunctions and fines. However, of the bills before you, we would prefer support of H.R. 13 because, in our opinion, it is the most complete collective bargaining bill.

Mr. MEGEL. Thank you very much. And that concludes my presentation unless you have questions you would like to ask.

Mr. HENDERSON. Thank you very much, sir, and I wouldn't have believed we could have finished by 12 o'clock.

Mr. MEGEL. I appreciate this opportunity.

Mr. HENDERSON. Thank you.

The subcommittee will stand adjourned.

[Whereupon, at 12 o'clock noon, the hearing was adjourned.]

[The statements and letters which follow were received for inclusion in the record subsequent to the hearings:]

STATEMENT BY THE NATIONAL ASSOCIATION OF AGRICULTURAL STABILIZATION AND  
CONSERVATION SERVICE COUNTY EMPLOYEES

Our organization, consisting of 98 percent of its potential membership, supports the provisions of H.R. 10700 providing it makes explicitly clear any organization consisting of supervisors and employees with the same interests and objectives and which has historically represented these persons be permitted to continue to represent them.

We appreciate the opportunity to present this statement and will appreciate your consideration.

Presented in absentia by Brad Rowland, president, 1314 S. Commercial Avenue, Anson, Texas; F. H. Scarborough, Jr., vice president, P.O. Box 459, Valdosta, Georgia; and Clyde R. Payne, secretary-treasurer, P.O. Box 392, Jasper, Florida.

STATEMENT OF S. RAYBURN WATKINS, PRESIDENT, NATIONAL LABOR-MANAGEMENT  
FOUNDATION

Mr. Chairman, members of the subcommittee, my name is S. Rayburn Watkins and I represent the National Labor-Management Foundation. I appreciate the opportunity to offer our views to you on H.R. 13, H.R. 9784 and H.R. 10700.



The National Labor-Management Foundation has offices in Washington, D.C. and Louisville, Kentucky. It was chartered in 1947 as a non-partisan, non-profit organization to provide research, education and information to develop a clearer understanding and better communication among employees, employers and the general public in labor-management matters. The Foundation studies and supports legislation that it believes will tend to bring about improved labor-management relations and better working conditions and opposes legislation which has the opposite effect.

The National Labor-Management Foundation's statement pertains only to the overall effect of H.R. 13, H.R. 9784 and H.R. 10700 would have on the public if passed by Congress.

To begin with, the National Labor-Management Foundation is opposed to the philosophy that federal employee unions or any public employee unions for that matter should be given the same special privileges and extraordinary powers as now held by unions in the private sector. The boycott, the picket line, the slowdown, the strike, and the featherbed do not belong in the operation of government.

Reduced to essentials, H.R. 13, H.R. 9784 and H.R. 10700 encourage unionization among federal employees—such as the original Wagner act of 1936 encouraged unionization among private sector employees—by establishing the framework through which compulsory bargaining arrangements shall be effectuated.

Since 1963 it has become politically fashionable with the leaders of both political parties to encourage the unionization of employees of the federal government—even against the will of the American public. The National Labor-Management Foundation sees this current proposed legislation as the first formal legal step toward creating a labor government in the U.S.

Unions in private industry are already obese with political power. Yet, legislators persist in encouraging the growth of the union shop and industry-wide bargaining which produce more union political power. The proposals before this subcommittee would provide the dues money for even greater union political activity directed toward the goal of a labor government.

Representative William J. Scherle (R-Iowa) recognized the impending danger from union power, declaring: "Having granted favored legislative status to the unions through the 1935 National Labor Relations Act, the nation now finds itself facing an octopus of political and economic domination. The balance of power in the private sector needs to be re-weighted by recognizing the legitimate claims of a third interested party—the American taxpayer. The interests of the public have never really been eloquently or even adequately defended in the long series of battles between management and labor. Yet the public is directly affected by crippling strikes and the inflation which results from exorbitant wage hikes in the business community."

What is decided by this Subcommittee and this Congress could be extremely costly to the public in terms of tax dollars and services.

At issue is whether the Congress should establish—by law—a labor-management relations program for the government's more than 2.6 million federal workers. Of the 1,082,507 federal employees now represented by unions, some 595,269 are dues-paying members. Thus, studies show that a compulsory union membership where-by federal employees would be forced to pay dues or fees to a union or not be able to work for their own government would net union officials a windfall of approximately \$29,239,080—which could be used to pursue their pet economic, social and political schemes.

If the unions have their way, thousands of federal workers who now don't belong to unions will be forced to do so.

The basic issues are these:

1. Should federal sector union officials have an "exclusive" voice for federal employees in dealing with federal agencies in behalf of these employees?
2. Should federal workers be compelled to pay money to unions in order to work for their own government?

The Brasco and Ford bills offer a cornucopia of goodies for union officialdom. Mr. Henderson's bill addresses itself to the needs of federal employees in the sense that it would strengthen the grievance procedure through which federal employees deal with their employers and flesh out the administrative structure for dealing with the question of collective bargaining.

One of the worst features of each of these bills is the creation of a powerful new bureaucracy—the Federal Labor Relations Authority, funded by tax dollars, whose function it would be to administer the act in an “even-handed manner. Any one who has dealt with a similar organization, the National Labor Relations Board, will verify that the only even-handedness would be the dividing up of public sector employees among union officials. Passage of any of these bills would serve only to encourage unionism at the federal level, and through establishment of precedent, at the state, county and local levels.

Passage of the bills under consideration would put into motion political forces that would ultimately find Americans facing the same question that former British Prime Minister Edward Heath asked during the last elections in his country, “Who rules Britain—the unions or the government?” Americans will be faced with this same question some day if we continue to pursue the course of giving more special privileges to the officials of federal employee unions.

While some Congressmen worry about the effect of labor power upon the public, the legislation now being considered would greatly increase that power and thus would strike directly at the public interest.

The British miners’ strike created unimaginable chaos. There 280,000 coal miners working for a government corporation almost paralyzed all industry and home life. International repercussions resulted and other Europeans referred to British public strikes as “The British disease.” This is the contagion that could spread to America if Congress enacts any bill which encourages the further unionization of federal employees and allows them to possess the same power as unions in the private sector.

It is the view of the Foundation, however, that if compulsory collective bargaining should be imposed upon the Federal Government by the Congress, any legislation adopted should forbid strikes, the union or agency shop, the doctrine of exclusive representation, the compulsory check-off of union dues money, and political activity by public employee unions. If collective bargaining is directed, it should be voluntary and limited to settling of grievances. Public employment has its own merits and privileges and should not be considered the same as private employment.

Civil service laws already define and establish equitable and realistic policies and procedures encompassing promotion, discipline, discharge, grievances, job classifications and definitions, job security and other appropriate matters involving the employer-employee relationship. This should be preserved.

One final point to consider in view of events in recent years: some government sector unions, most notably at the state and local levels, have evidenced utter irresponsibility, have displayed complete defiance of the law and have demonstrated a callous contempt for the public welfare. These unions have rejected our constitutional process, taken the law into their own hands and created severe hardship for the public at large in their attempts to advance their own special interests, at the expense of the taxpayers.

It is essential that strict financial penalties be incorporated in any legislation dealing with government employees for violation of provisions thereof. Jailing irresponsible union leaders, or even union rank and file members, is not the answer, particularly if the period of confinement is relatively short.

A better solution to ending, or at least minimizing, the occurrence of strikes, damage to government property, and other illegal activities occurring during a labor dispute of federal employees, is fines of such a magnitude as to provide the necessary deterrent to further violations. Such fines should be mandatory, thereby obviating the danger of weak and expedient public officials refusing or neglecting to carry out their official duty to uphold the law and impose penalties. Amnesty for unions, their leaders and members who violate the law should be prohibited.

When striking unions violate the law and cause damage to the public at large, the injured party—the public—should, as in other areas of the law, e.g., anti-trust matters—be provided a remedy to recover loss. It appears that only through such a mechanism can the American public be protected against the illegal, irresponsible and defiant acts of certain government unions and their leaders.

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STATEMENT OF THE JOINT COUNCIL OF UNIONS, GOVERNMENT PRINTING OFFICE

Mr. Chairman and members of the committee, my name is Cornelius V. McIntyre, and I am president of the Washington Printing Pressmen and Assistants' Union, Local No. 1, an affiliate of the International Printing and Graphics Communication Union, AFL-CIO.

I am also chairman of the Joint Council of Unions at the Government Printing Office. This Joint Council represents twenty-one unions and approximately eight thousand employees.

We want to endorse the principle of a Federal Labor Relations Act and the adoption of H.R. 13, which we believe will meet the needs of the employees of the Government Printing Office whom we represent. In your Bill H.R. 10700, we find that the Government Printing Office and its personnel, all of whom are Legislative employees, are excluded.

The unions in the Government Printing Office have been in existence for over 100 years, and have been in the forefront of Labor-Management relations throughout its existence.

As you probably know, the employees in the Government Printing Office have been governed since 1924 under the Kiess Act, which sets the procedure for yearly wage conferences with the Public Printer and we have no desire to infringe on or to abolish this law under a Labor-Management Relations Act.

Even though the employees at the Government Printing Office do not come under Executive Order 11491, by the implementation of most of this and the inclusion of an Umpire to decide issues similar to those designated to the Assistant Secretary of Labor for Labor-Management Relations, (Section 6, Executive Order 11491), we not only find the same shortcomings of the Executive employees in the implemented Order but are confronted with many more.

Many times we are confronted with the management theory that we are employees of the Legislative Branch and issues are non-negotiable because of this and then we are told that the Civil Service and Federal Personnel policy prevails, depending on which seems most appropriate to their way of thinking at the time.

Even after these obstacles are passed, we are often confronted with the absolute power to negate all of this by the Public Printer's authority as the head of the Agency.

We believe that the employees of the Government Printing Office must be included in any Labor-Management Relations Act and furthermore, we feel that the Members of your committee will agree that the employees of the Government Printing Office should have the same privileges and enjoy the same benefits that the rest of the government employees would by the enactment of such a law.

We sincerely appreciate the privilege of having the opportunity to present these comments and we do urge your support in having the employees of the Government Printing Office included under this act.

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STATEMENT OF EWAN CLAQUE, PRESIDENT, THE FEDERAL PROFESSIONAL ASSOCIATION

As President of The Federal Professional Association, a voluntary organization of Federal employees engaged in the various professional disciplines, founded in 1962 and chartered in the District of Columbia, I invite your attention to the implications of the provisions affecting professional employees in H.R. 10700, H.R. 13 and H.R. 9784, bills dealing with labor-management in the Federal service.

These bills call for enactment into law of such provisions rather than their implementation by presidential regulations under executive orders, which has been the practice since 1962. The bills would supplant the prevailing labor-management regulations in Executive Order 11491, as amended by E.O. 11616.

The position of The Federal Professional Association on these bills can be summarized in three points:

First, we believe that it is preferable to continue to implement labor-management relations in the Federal service through executive orders rather than shifting at this time to legislation. There are still many unresolved problems in this field which can be better handled by the flexibility of executive orders rather than by the rigidity which is introduced by enactment into law. The framework of those relationships as they apply to professionals has not yet been firmed up sufficiently to warrant legislation.

Second, we in The Federal Professional Association believe that professionals should be left free to join or not to join an employee organization. That is the situation which exists now. We are opposed to any legislative provision which would require them to pay dues to an employee organization.

Third, we believe that professionals as a class should be excluded from the bargaining units. Professionals should be treated as a separate category of employees.

#### PROFESSIONALS IN THE CAREER SERVICE

The backbone of the Federal Government is the Federal Career Civil Service. The Government is as good as the Career Service makes it and the Career Service is as good as its leaders and advisors. The leaders and advisors of the Career Service are mostly professionals. The thrust of this statement is that the Federal employee-relations structure and the proposed bills fail to provide adequately for this most important element of the Government, namely, the career professionals who develop the information, help set the policies and direct the activities of other employees.

The most widely used definition of a professional is that of the Taft-Hartley Act. It mentions such items as: knowledge of an advanced type, consistent exercise of discretion and judgement, predominantly intellectual activities, and the impossibility of standardizing the accomplishments. These features of professionalism are, of course, matters of degree rather than matters of kind. Therefore, it is often helpful to invoke other characteristics, such as the need for continuing education, in order to distinguish the some 300,000 professionals from the other employees.

The motivation of the professional is different from that of other employees in the sense that it is dominated by intellectual challenges. Typically, he achieves solutions to problems or generates plans, rather than producing supportive memoranda, fine hardware or prompt messenger services. Creative achievement constitutes the basis for recognition and advancement. The professional prefers work involving flexibility in its manner of execution rather than adherence to well-established procedures. And he often gets more satisfaction from recognition of his achievements by his peers than by his supervisors.

Summarizing, the tool of the professional is very special knowledge, and his skill is in making judgements. He seeks a reasonable balance among several goals—his own career, the well-being of his particular profession and his dedication to the government service. He needs an intelligent voice for his special problems, but he usually shies away from the rigidities of a union.

#### ROLE OF THE PROFESSIONAL IN GOVERNMENT

The professional is typically either a part of management or closely associated with management. Either he exercises delegated authority or he influences policy through the strength of his ideas. Right down to the most junior level, the professional is generating the advancement of knowledge, improvements in services, and sound bases for decisions at higher levels of authority.

The relation between the professional employee and management is complicated by the fact that he is either a part of management or, if not, he is responsible for generating the information which will be used for policy decision-making somewhere in the management hierarchy. He is held responsible not only for the validity of information, but also for the pertinence, importance and timeliness of his proposals. He must assume an intellectually honest view of his responsibilities and loyalties to the United States, to his profession, and to his agency and its policies. He is ethically bound to express his convictions.

The impact of the man on the job governs the functions to be performed. For example, the Civil Service Commission has long recognized that the contribution of a research scientist depends significantly on the manner in which his achievements and development enhance the functions of his position. This principle pervades all professional employment situations. It has given rise to rank-in-the-man proposals, such as have been used in the armed forces. It has made the employee relations of the professionals different from those of other employees. And these differences exist in all aspects of managing professionals, e.g., selection, classification, career development, supervisory practices, and performance evaluation.

#### EMPLOYEE RELATIONS INVOLVING PROFESSIONALS

Professionals do not fit neatly into a two-fold classification of labor and management. In many ways they constitute a "third estate," which is often neither management nor labor, or which is sometimes part one and sometimes part the other. Many, if not most, professional employees begin as research workers or practitioners, but end up by becoming supervisors, managers or directors. Mid-

way through his career the average professional is conducting studies, making surveys and supervising subordinates in a management role, even though he or she retains close professional ties with his or her professional peers.

This problem of relating to management can become acute for a professional who advances in the Federal service. He gradually moves across the line from being an employee under the direction of others to becoming a supervisor of junior professionals and others, and perhaps eventually a director of a division or agency. He can do all this now without weakening in any way his association with his profession.

The professional who wishes to advance his profession or advance in his profession must maintain close relationships with the associations which represent his professional interest. He owes his allegiance to his agency, but he also establishes ties with his professional associations. These two loyalties may occasionally conflict in the normal course of events, as in cases of dissent, but he should not be forced by legislation into an additional source of conflict.

It is for those reasons that we in The Federal Professional Association believe that professionals should be left free to join or not to join other employee organizations.

#### BARGAINING UNITS

The adversary posture of bargaining with management is inconsistent with the natural role and, in fact, the duty of professionals to advise and support management and usually to aspire to management and executive positions. In most situations a non-adversary means of spokespersonship will be more consistent with the relations of professionals to management; and such means should be developed.

The important problems currently impacting on the professional group are salary ceiling, contracting-out and ethical practices. The biggest problem, however, is the threat of losing the professional voice by submerging half of it in minorities within the bargaining unit and muffling the other half as management. As part of a bargaining unit the professional voice would be lost, because it would be a minority in a group with different goals and aspirations. The professionals' major problems are national rather than local, so their time and resources are better applied to employee-relations systems other than local bargaining.

Of the three bills receiving consideration we favor H.R. 10700 (Mr. Henderson), because it allows the freedom of choice essential to career employees of the Federal Government. However, we would want to have added to the bill a provision that professionals be excluded from the bargaining units.

#### STATEMENT OF THE AMERICAN NURSES' ASSOCIATION

Mr. Chairman and members of the committee, the American Nurses' Association (ANA) is the professional organization of registered nurses and has a present membership of approximately 200,000 RNs. The ANA has constituent associations in all the fifty states, the District of Columbia, Guam and Virgin Islands.

The purposes of the ANA are to foster high standards of nursing practice, promote the professional and educational advancement of nurses, and promote the welfare of nurses to the end that all people may have better nursing care.

There are approximately 27,000 RNs presently in the employment of the Federal government, with the Veterans' Administration being the largest employer of RNs in the Federal sector. The ANA welcomes the opportunity to submit statements expressing views on the proposed bills dealing with employee relations in the Federal sector, viz. H.R. 10700, H.R. 13, and H.R. 9784.

#### FEDERAL EMPLOYEES SHOULD HAVE THE SAME RIGHT TO BARGAIN COLLECTIVELY AS THE EMPLOYEES OF THE PRIVATE SECTOR

The ANA strongly believes that the employees' right to bargain collectively with their employer(s), on matters of salaries, fringe benefits, working hours and other conditions of employment is an essential ingredient of American democracy. A clear and unequivocal recognition of the right to bargain collectively has been the declared policy of the United States and has been the main basis of the National Labor Relations Act. This policy is equally valid and applicable in the case of Federal employees. The ANA advocates a policy which

would grant the Federal employees the same right to bargain collectively with employers as the counterparts in the private sector have enjoyed for the past four decades. The ANA is aware of the unique nature of the public services provided by Federal employees, and that considerations of compelling public interest may well dictate deviations of departures from established principles and procedures of collective bargaining available to private sector employees. Such deviations, however, should be minimized.

EXECUTIVE ORDERS 10988 AND 11491 HAVE LAID THE PROPER FOUNDATION FOR LABOR MANAGEMENT RELATIONS IN THE PUBLIC SECTOR

Executive Order 11491, and its predecessor, Executive Order No. 10988, have established the necessary foundation for developing a more comprehensive legal framework for employee relations in the Federal sector. The ANA believes that any Congressional action in providing a legislation for Federal employee relations must be directed toward building on the foundations established by the Executive Orders. The attempt should be directed toward improving the present system by correcting known inadequacies rather than by completely abandoning it. With this end in view, the ANA's comments in the following paragraphs are designed to increase the effectiveness of present arrangements.

SCOPE OF BARGAINING

The American Nurses' Association advocates the retention of the present authority of Congress to legislatively determine salaries, hours of work and fringe benefits of Federal employees. These subject issues should be excluded from the scope of bargaining. However, with a view toward providing effective and meaningful participation by Federal employees in establishing an equitable system of compensation, present arrangements for obtaining input from employee organizations representing Federal employees should be further strengthened.

The appropriate congressional committees should treat the submissions of employee organizations on the same basis that an employer in the private sector would treat the same submissions emanating from a union representing employees.

The Congress to date has given thoughtful consideration to nurses' needs in the area of salary and fringe benefits in the Veterans Administration system. Organized nursing has appreciated the standards set by legislation.

The ANA is aware of the serious limitations that would be placed on the Federal employee's right to bargain collectively with their employers by the exclusion of matters such as compensation, fringe benefits, and working hours from the scope of bargaining. The past experience, however, justifies the position taken by the ANA.

The American Nurses' Association would not recognize any other abridgment of the scope of bargaining by Federal employees. We recommend the abolition of additional restrictions on the scope of bargaining on the grounds of the Federal manager's unrestricted right to "manage the mission of his agency, its budget, its organization, the number of employees, etc., etc." By keeping the substantive matters of employment such as compensation, fringe benefits, working hours, outside the arena of collective bargaining, Federal employees have already subjected themselves to severe restraints on their rights.

There is no reason to further diminish this right by granting to Federal managers additional rights under the guise of "inherent authority" necessary to manage the "mission of the agency". The past two or three decades have witnessed considerable inroads into the inherent rights of private sector managements without any appreciable decline either in the efficiency or the profitability of the firm. There is no reason to believe that Federal managers would be severely handicapped in their exercise of prudent and efficient management of their agencies by conceding to their employees rights in those areas. In actual practice, the present right vested in the heads of Federal agencies to veto already negotiated collective bargaining agreements has been a source of frustration. Undue delay has been experienced in obtaining ratification which is one cause of avoidable employee dissatisfaction.

RIGHT TO STRIKE

It is well recognized by professional practitioners of collective bargaining that the phenomenal success achieved by the institution of collective bargaining could be legitimately attributed to the employees' right to strike. In fact, collective

bargaining and the right to strike are inseparable; they are the two sides of the same coin.

The ANA is not oblivious of the fact that a strike, even of a very short duration, by some groups of Federal employees handling jobs critical to the smooth and normal functioning of the society can severely upset the normal operations of society.

The American Nurses' Association does not believe in resorting to "quickie" wild strikes. Registered nurses do not resort to strikes for capricious or frivolous reasons. Professional nurses strike only when they receive a rebuff from their employers in (i.e. RN's) efforts to deal with their professional concerns such as unmanageable workloads. These often result from too many budgeted positions remaining vacant because of low salaries that have long since ceased to be competitive enough to attract qualified personnel. An *American Journal of Nursing* article in reporting on happenings around the country by nurses stated, "However, tired as nurses were of subsidizing an affluent society's health care at the cost of something less than affluent living for themselves and their families, the ferment was not about salaries alone. In most instances, what finally made nurses act was their inability to care for patients".<sup>1</sup> Often have the nurses been made to realize, to their own dismay, that refraining from rendering substandard patient care, in circumstances that might amount to strike, is the only way of ultimately improving patient care.

#### RIGHT TO STRIKE SUBJECT TO FIRST EXHAUSTING IMPASSE PROCEDURES

While the ANA believes that the Federal employees should have a limited right to strike, the ANA is not "strike-happy". It is the ANA's position that while the right to strike is essential, safeguards must be built into law to prevent its frivolous or elusive use. Incorporating well spelled out impasse resolving procedures into the law relating to collective bargaining by the Federal employees is essential to smooth and peaceful working process. The ANA recommends that resorting to a strike without participating in procedures devised to resolve impasses in negotiations must be made an illegal conduct. Such conduct should carry punishments commensurate with the gravity or grossness of the violation of the ban on strikes before completing impasse procedures.

#### JUDICIAL REVIEW MUST BE THE TERMINAL STEP IN THE GRIEVANCE PROCEDURE

The prompt resolution of grievance arising out of the interpretation and/or application of the negotiated contracts are prerequisites for achievement and maintenance of good labor-management relations. Some inadequacies are present in the existent provisions for contract administration. These inadequacies need immediate attention. The procedure needs strengthening in the following ways:

The terminal step in the grievance procedure must be the judicial review. In any system of government that is based on the principle of government by laws rather than that of government by men, our suggestion needs no further justification.

Time spent by representatives of employee unions in representing fellow employees in the processing of grievances should be statutorily recognized as "official time". It is common practice in the private sector to provide union stewards sufficient time to investigate and process grievances. It is believed that the establishment of this practice in the Federal sector would contribute to maintenance of good labor-management relations.

#### NEED FOR STRENGTHENING PROVISIONS RELATING TO UNION SECURITY

In all industrial and democratic societies employee organizations are now generally regarded as useful social institutions. An employee organization, that is freed from the compelling need to worry over its continued existence tends to behave in a more responsible and mature manner. Benefits accruing from an employee organization that feels secure cannot be overstated. The ANA strongly recommends that Federal employee relations law contain adequate provisions guaranteeing the security of the employee organization.

The ANA accepts the philosophy that every Federal employee should have the right to decide, in accordance with his own conscience, whether it is in his in-

<sup>1</sup> Martha Belote: "Nurses Are Making It Happen," *American Journal of Nursing*, 87:785, Feb., 1987.

terest to join or not to join a particular employee organization. At the same time, every Federal employee that receives the collective bargaining services from an employee organization operating in his facility must contribute his fair share in financially supporting the employee organization whose services he is availing, directly or indirectly. In short, the ANA supports an employee organization's right to levy agency service fees from nonmembers. It is only fair that as the employee organization has a responsibility to represent all employees, all employees should have a responsibility to support that organization.

Another measure of equal importance is the need to recognize an employee organization's right to have the facility of payroll deductions for membership dues from members and for agency shop or service fee levies from non-member employees of the facility. An employee organization of public employees, who have given up their jurisdiction over substantive matters of employment such as compensation, working hours, holidays, vacation, etc. and who have subjected their valuable right to strike to certain statutory limitations, does not ask for too much when it asks for statutory recognition of its right to payroll deductions free of any charge or costs, of membership dues or agency shop fees.

#### SPECIFIC CONCERNS OF REGISTERED NURSES

Having stated its views on several broad issues that are relevant to Federal employee relations law, the ANA considers it pertinent to state concerns that are specific of RNs.

#### MANDATING A SEPARATE BARGAINING UNIT FOR RNS

The community of interest prevailing among RNs has been proven. In order that RNs can effectively handle concerns on patient care and about paramount need for obtaining a proper voice in promoting working conditions that are conducive to quality health care, it is essential that a separate bargaining unit for RNs becomes statutorily mandated. We have been hearing these days concerns expressed by the Federal managers about the need for reducing the number of bargaining units. We have an apprehension that the esteemed members of this committee may yield to the pressures generated by the Federal agency administrators. The ANA strongly urges this committee not to succumb to such pressures and to statutorily mandate a separate bargaining unit for all RNs in a given facility. Precedents for such statutorily mandated exclusive bargaining units for RNs are now gradually growing under state employee relations laws. For instance, Hawaii State Public Employee Relations Law mandates a separate bargaining unit for RNs.

#### ISSUE OF SUPERVISORY EXCLUSION

It is quite understandable that employees employed in executive supervisory positions not be included in the bargaining unit. As professional nurses, most of the RNs employed as "Head" Nurses, "Charge" Nurses, etc. are not supervisors in the traditional or business parlance of the term "supervisor". Even though such RNs are merely coordinating the activities of nurses aides, LPNs and other sub-professionals in the interest of better patient care, they are presently excluded from the bargaining unit. In short, the professional authority, inherent in the need that registered nurses should coordinate the activities of other aides, and orderlies so that the patients get appropriate nursing care is misunderstood as the nurse's authority to supervise the activities in the interest of the employer. Time and again the ANA and its constituent units have tried to explain to distinguish the professional authority of a nurse to direct the activities of other employees in the interest of better patient care from the supervisory authority of a professional nurse. It is ANA's suggestion that this Honorable Committee recognize the proper distinction between the professional authority of a registered nurse as different from the real authority of supervision in the interest of the agency and amend the definition of the supervisory employees in the following manner:

"Supervisor" means an employee having authority in the interest of an agency, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them, or to evaluate their performance or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment, provided, however, that a health-care professional employee shall not be deemed



or found to be a supervisor if the authority or activity which would otherwise be the basis for finding him to be a supervisor inheres in professional judgment or responsibility or involves any exercise of professional as distinct from merely administrative or managerial responsibility."

#### THE CONFLICT OF INTEREST ISSUE

As already stated earlier, the ANA and its constituents have a history of representing professional registered nurses employed by the VA system. The ANA is a multipurpose professional organization, and as such its membership is also available and open to all registered nurses employed in administrative, supervisory or managerial positions in nursing in the VA system. It has been the unfortunate experience of the ANA, that in administering the provisions of the Executive Orders 10988 and 11491, the Veterans Administration has placed an unduly strict interpretation on the conflict of interest provisions. Such strict interpretations have resulted in issuance of administrative instructions disqualifying or prohibiting ANA members employed (administrative or supervisory or managerial positions) in the VA system from holding positions of office in the ANA and its state and district constituents. Time and again we have explained to the VA that no real conflict of interest is involved in allowing administrative, supervisory and managerial nurses to hold positions of office in a multi-purpose professional organization like ours. We have, so far, not met with any success. VA's ban on RN participation in the professional activities of the ANA, have deprived the ANA of valuable input from a large segment of VA nurses. This input is invaluable to the formulation of nursing care principles and policies. We earnestly urge your committee to recognize the needs of a multi-purpose professional organization like the ANA and to make appropriate provisions for resolving the dilemma resulting from such a strong and adamant position of the Veterans Administration on the so-called conflict of interest issues. The ANA would certainly appreciate a strong and positive endorsement from this Committee on the need to exempt a larger number of nurses from those deemed to have a conflict of interest.

#### THE ABILITY OF A MULTI-PURPOSE PROFESSIONAL ORGANIZATION TO CONDUCT EDUCATIONAL PROGRAMS MUST NOT BE IMPAIRED JUST BECAUSE THE ORGANIZATION IS ALSO REGISTERED AS A LABOR ORGANIZATION

The ANA would like to share with this Committee a peculiar case that has developed under the Executive Order No. 11491. The North Carolina State Nurses Association, an ANA constituent arranged an educational workshop in May, 1973 with the object of providing professional improvement of all Psychiatric-Mental Health Nurses. In accordance with the long established policy of the VA, the Veterans Hospital in Salisbury, North Carolina, displayed the flyers relating to this seminar on the staff bulletin boards announcing that administrative leave would be available to the RNs interested in attending the seminar. Several RNs availed of the administrative leave and attended the conference. The American Federation of Government Employees, Local 1738 filed an unfair labor practice charge against the VA Hospital in Salisbury alleging that in granting administrative leave to VA nurses for attending the above workshop, the VA Hospital was guilty of violating the provisions of Sections 19(a) (1) and (3) of the Executive Order 11491. The gravamen of the charge was that inasmuch as both the ANA and its affiliate NCSNA were labor organizations as defined under the Executive Order 11491, the VA Hospital authorities were guilty of violations of the provisions of Sections 19(a) (1) and (3). The charge was numbered as the Case No. 40-4953 (CA). The Administrative Judge, after conducting a hearing in Salisbury, North Carolina, on December 4-5, 1973, has recommended that the complaint of the AFGE, Local 1738 be dismissed. The AFGE, Local 1738 has filed objections with the Secretary of Labor to confirming the recommendations of the Administrative Judge. The Secretary's decision is awaited. Since the matter is still sub-judice, the ANA would refrain from expressing any opinion as to the merits of the case of either party.

The facts leading to this case, however, do emphasize the limitations that could be placed on a multi-purpose professional organization who is also registered as a labor organization under the Executive Order 11491, in carrying out its professional objectives of providing opportunities to its members in terms of educational seminars and conferences for the professional and continuing education of its members. The dilemma posed by the Salisbury, North Carolina case is a real one and calls for early resolution.

It is in the public interest that members of a professional organization receive all the encouragement that they need in improving their professional competence. The VA policy in granting administrative leave to its professional employees for attending the educational conferences arranged by their professional organizations certainly serves and promotes public interest. It is imperative that such a progressive policy should not be allowed to be defeated on the legalistic ground that such a policy amounts to an unfair labor practice. What is the solution? The solution lies in deleting from Section 7(d)(3) of the Executive Order the words, "not qualified as a labor organization" occurring after the word "lawful association" and before the words, "with ———." Such a deletion would render the whole matter free from any doubts about a Federal agency's authority to grant administrative leave to its professional employees for the purpose of attending educational seminars arranged by a multi-purpose professional organization.

Since we have spoken of our concerns in terms of issues rather than on specific provisions of the three proposed bills H.R. 10,700, H.R. 13 and H.R. 9784, we have refrained from endorsing any of these specific bill or bills.

#### SUMMARY

In conclusion, the ANA believes that a time for enacting a comprehensive law regulating collective bargaining rights of Federal employees is now at hand. Such a legislation must be built upon the system of collective bargaining now established under Executive Orders 10988 and 11491. The ANA believes that Federal employees should have many of the same rights as their counterparts in the private sector. However, at this stage, the ANA recommends that matters directly relating to compensation, working hours, leave, vacation etc. be excluded from the scope of bargaining. Our recommendation is based on our experience that the Congress has responded sympathetically to our concerns and appeals about the need for upgrading RN salaries and other conditions of service to ensure the needed supply of RNs. The Federal employees should have a limited right to strike. However, any exercise of the right to strike must be subject to the limitation that it can be exercised only after all procedures prescribed for resolving impasses in negotiations have been tried and failed, and should be permitted only in those circumstances in which public health and safety are not jeopardized.

The ANA further believes that the terminal step in grievance procedure under the Federal employee relations law must be that of judicial review. Time spent by a union representative in representing fellow employees, in resolution of their grievances must be charged to official time. An important element of the proposed Federal employee relations law must be to provide adequate security to employee organizations. Such organizations must be given the facility of agency shop arrangements and the facility of payroll deductions of its membership dues and/or agency shop service dues free of charge.

The ANA strongly urges the Committee to recognize the strong community of interest felt by RNs and the need for statutorily mandating an exclusive bargaining unit for RNs. The ANA advocates that the term supervisory employees should not be used to exclude from bargaining units, RNs having only professional authority over the activities of other employees for delivering proper nursing care.

The ANA also requests the committee to recognize the problem resulting from a narrow interpretation placed by the VA on the conflict of interest issue. Similarly ANA earnestly urges the committee to resolve the dilemma arising out of the unfair labor practice charges, case No. 40-4953 (CA) filed by the American Federation of Government Employees, Local 1738 against the Veterans Hospital in Salisbury, North Carolina.

The ANA trust its submissions would receive careful consideration from the members of this Committee.

STATEMENT OF W. A. NAGEL, LEGISLATIVE CHAIRMAN, ASSOCIATION OF SENIOR ENGINEERS

The Association of Senior Engineers, ASE, is an independent, non-profit organization chartered to uphold the rights and interests of the civilian engineer, and its other members (members who are technically associated with the engineer) who are employees, including retirees of the Naval Sea System Command, (formerly known as Naval Ship Systems Command). This association is quar-

tered in the Metropolitan Washington, D.C. area and has a membership of approximately 700 members. We welcome this opportunity to present our views, in conjunction with other member organizations of the National Federation of Professional Organizations at this Committee's hearing on proposed legislation, H.R. 13, H.R. 9784 and H.R. 10700.

As duly appointed representatives of ASE, we must in the best interest of the membership of ASE oppose any legislation that encroaches upon the rights and independence of our members.

Although it might be in the interest of the professional societies, such as ASE, to have laws or statutes that will assure its membership the right of freedom of choice and action as when, how, and to whom dues as a requirement of membership shall be paid, it is not in the best interest of the ASE membership to have its members required by law, to pay dues to a labor organization whose beliefs and purposes differ from those philosophies of our society and which denies the professional his freedom of choice and independence, such as being proposed in bills H.R. 13, H.R. 9784, and somewhat modified in H.R. 10700.

The ASE also recognizes the fact that laws or statutes are needed to protect the rights and interests of the Federal employee in the professional fields—engineers, chemists, doctors, lawyers, accountants, dentists and the many other professional disciplines that require considerable technical and academic training, plus years of experience to obtain an expertise to be acceptable as a professional—when involved in labor-management disputes. Such laws or statutes should then be written by the legislators with the help of members of these various professions, the people that know what legislation is needed to best serve the needs of the "professional", and should be independent of any laws or statutes that are designed to serve all Federal employees (both professional and non-professional).

Past experience in the field of labor-management relationships has proved that most employees in the non-professional fields outside of the Federal Services are being best served by a labor organization when dealing in disputes between labor and management, and similar laws are long overdue which will provide the same services for the Federal employee.

If it is the intent of the sponsors of such bills as H.R. 13, H.R. 9784, and H.R. 10700 to foster improved labor-management relations between the Federal employee and the Federal agencies, then the language in such bills should clearly state separately the needs of the professional and how best to serve him from that of the non-professional employee. Although bills H.R. 9784 and H.R. 10700 include a definition of a "professional employee," neither of the three bills in question provides the professional with adequate protection as to his right to join or not to join a labor organization or to pay dues, as a condition of employment, to a labor organization when the unit or agency in which he is employed is organized.

The professional employee in most agencies is in the minority, therefore, if he is to be given the right of choice under an improved labor-management relationship, then he must be guaranteed by law or statute complete independence of having any responsibilities or participation in such labor-management negotiations that does not directly or exclusively involve the professional employee, unless by choice he wishes to participate in such negotiations and be bound by resulting actions. The professional employee should also be given the right to choose the labor organization or a duly registered professional society he wishes to be his exclusive bargaining agent in dealing with management in any labor-management negotiations conducted in his behalf.

Any legislation which deals exclusively in behalf of the professional must be written so that it's binding on both parties involved and strong enough in language to have meaning and protective enough to assure the professional his right to a free vote and guaranteed consultation rights without fear of coercion or reprisal by his agency including the independent right of choice in matters of dues collection or deductions.

Certain definitions must be delineated to avoid any conflicts of interests or rights of all Federal employees as to their freedom of choice involving membership in a unit of a labor organization or professional society when eligible.

We urge you in the best interest of the ASE membership to include in any labor-management bill that might be approved by this subcommittee language that separates the professional employee from the non-professional employee and to delete any language or implications that deny the professional employee his

independent rights or freedom of choice or that requires the professional employee to pay dues to any organization, except voluntarily and by written authorization.

NAVAL CIVILIAN ADMINISTRATORS ASSOCIATION,  
OFFICE OF THE EXECUTIVE SECRETARY,  
Haddonfield, N.J., July 24, 1974.

The Honorable DAVID N. HENDERSON,  
Chairman, Subcommittee on Manpower and Civil Service, Committee on Post  
Office and Civil Service, House Office Building, Washington, D.C.

MY DEAR MR. HENDERSON: The Naval Civilian Administrators Association is an organization of approximately 500 professional and administrative civilians in high level positions of responsibility in Naval Shipyards, Naval Aviation activities, Naval Supply Centers, and Naval District Headquarters. Our Association has been in continuous existence for 27 years and we have 14 Chapters. Our National President is Mr. Joseph Derwiecki of the Portsmouth Naval Shipyard, Portsmouth, N.H.; and the National Vice President is Mr. Thomas R. Walsh of the Mare Island Naval Shipyard, Vallejo, California.

We are affiliated presently with the National Federation of Professional Organizations, and attended the session of your sub-committee on July 16 at which time Mr. Hill presented the NFPO statement. We are in general support of the NFPO position; however we respectfully request that the following specific points representing the views of our Association be entered into the record of the sub-committee hearings:

1. We are opposed to any legislation which would permit the right to strike against any unit of the United States Government by a labor organization. We view with considerable alarm the prospect of a naval shipyard, a naval air station, or any military base being shut down by a strike.

2. We are opposed to legislation which would permit as a condition of employment the authority of a labor organization to require membership or the forced payment of dues by nonmembers. We believe in the right of free choice as in H.R. 10700 or E.O. 11491 and E.O. 11616.

The NCAA is not anti-union; however, we believe that the Civil Service does differ from private employment. The extension of any form of strike rights and compulsory unionism to the people who are concerned with the defense, the operation, or the welfare of the United States of America is inimical to our country.

Very respectfully,

J. HARTLEY BOWEN, Jr.,  
Executive Secretary.

U.S. CIVIL SERVICE COMMISSION,  
Washington, D.C., July 29, 1974.

Mr. ROY C. MESKER,  
Staff Director, Subcommittee on Manpower and Civil Service of the Committee  
on Post Office and Civil Service, Rayburn House Office Building, Washington, D.C.

DEAR MR. MESKER: Thank you for the opportunity to provide additional information on legislative issues relating to the Federal labor-management relations program. My comments on the six questions contained in your letter of June 20, 1974 are attached.

If I can be of further assistance, please advise me.

Sincerely yours,

ROBERT E. HAMPTON,  
Chairman.

Enclosures.

1. Executive Order 11491 provides for an agency system of intramanagement communication and consultation with its supervisors or supervisory associations. H.R. 13, H.R. 9784, and H.R. 10700 are silent on such relationships. What are your views on the inclusion of this matter in labor-management relations legislation? How should the subject be handled?

Response

While we fully support systems for intra-management communication and consultation we do not believe this matter appropriate for legislation seeking to

regulate union-management relations. Agency systems for intra-management communication and consultation with supervisors and supervisory associations are more appropriately left to management structures.

2. Under H.R. 13, H.R. 9784, and H.R. 10700, employees of the central bodies that would administer the law could be represented by labor organizations, thereby becoming a party-at-interest in matters coming before the central body as well as becoming involved in union management dealings with the central body. This would appear to contain the seeds of conflict of interest. A. Should these employees be removed from coverage under these bills? Why? B. If not excluded, what alternatives would you suggest?

*Response*

As noted in the question, without such exclusion employees of the central body could be represented by a labor organization and thereby become a party-at-interest in matters coming before the central body as well as becoming involved in union-management dealings with the central body. Therefore, in recognition of the conflict-of-interest considerations resulting from the very special relationship that would exist between a central body as the central policy and appellate body of the program and its employees, these employees should be specifically excluded from coverage. (While they would have a right to join a labor organization, if they so choose, they would not be eligible for recognition under the provisions of the program.) This would be consistent with the existing practice for certain groups of other employees where conflict of interest is also a problem, such as employees engaged in Federal personnel work in other than a purely clerical capacity. Although excluded from coverage for the purpose of the labor-management relations law, the employees would otherwise be covered by appropriate administrative and statutory procedures for resolution of their grievances and complaints.

3. As a priority issue you identify the need to determine who the "employer" will be. What problems, if any, can you delineate in determining the "employer" under the systems established by H.R. 10700? What suggestions would you make to resolve this matter?

*Response*

Under the systems established by H.R. 10700, problems such as the following are involved regarding the "employer";

As we understand the Federal Labor Relations Board (FLRB) arrangement in section 7107(g), it appears that the Chairman of the FLRB would ultimately function as the employer concerning personnel management policies and regulations affecting more than one agency. We see no need for and have great problems with the total FLRB arrangement as described in our report on H.R. 10700 and Statement for the Record submitted on May 21, 1974, including (a) that to delegate to the Chairman of the FLRB ultimate authority over such a vast range of Government-wide policy without any responsibility to any authority usurps essential authorities historically delegated by the Congress to Federal agencies and officials for fulfilling their responsibilities and seriously cripples management's capability to manage and function as employer; and (b) that it would be impracticable to administer such an arrangement.

Agency authorities above the level of recognition would act as the "employer" according to our understanding of the mechanisms in section 7107(e) (3) and (4). As we also discussed this concept in our report on H.R. 10700, "although it is desirable to bring more closely together the level of recognition and the focus of agency authority so as to make possible more meaningful negotiations, the arrangements proposed for dealing with this matter are not satisfactory. First, they would result in bargaining rights where there is no appropriate bargaining unit and the employees affected have had no opportunity to express their views. In addition, as we understand the concepts involved, it would be extremely impracticable for agencies to implement and administer the provision. . . ."

If the Congress, however, deems it necessary to have statutory provisions dealing with matters of government-wide and agency-wide applicability, we would recommend that more workable alternatives be sought, such as the following:

A requirement for consultation with employee organizations in the development of Government-wide personnel policies.

Give the central authority for the program oversight responsibility to assure that agency regulatory requirements do not unnecessarily restrict the scope of bargaining.

At the recognition level, the "employer" is agency management at that level. This could be continued, however, to achieve a broader range of negotiations, broader units should be established. The present provisions for national consultation rights, as reflected in H.R. 10700, should be continued.

4. In your remarks you stated that you could not accept legislation that includes negotiation of pay rates and economic fringes on a fragmented bargaining unit basis. As the result of legislation now in effect, labor organizations participate through a variety of mechanisms as members of various bodies. In the area of pay for white collar and blue collar employees, health benefits and life insurance, H.R. 10700 would give labor organizations bargaining rights with respect to a number of matters referred to as personnel policies and practices and matters affecting working conditions at the Civil Service Commission and comparable levels. The latter, generally, are circumscribed by matters covered by law. H.R. 9784, however, would extend negotiations to matters of statute.

What are your views on possible consolidation of all labor management matters, including pay and fringe benefits, affecting Federal employees into one bill so that the entire subject would be covered by one process involving labor and management?

If you do not favor consolidation as implicated by the previous question, what alternatives would you suggest that would overcome fragmentation of bargaining at the national and local levels?

#### *Response*

We recognize the problems that have resulted from the recognition of numerous, fragmented units at field activity levels where the full delegation of personnel authority is impractical, inefficient, and perhaps damaging to the morale of employees similarly situated throughout an agency. This is an issue currently before the Federal Labor Relations Council.

It is desirable, of course, to bring more closely together the level of recognition and the locus of agency authority so as to make possible more meaningful negotiations. To deal with the objective of expanding the scope of negotiations and the problems connected with the fragmentation of bargaining units, and assuming basic economic and other government-wide policies were not included, we would recommend consideration of more workable alternatives such as the following:

As in section 7106(i) of H.R. 10700, make it easier to consolidate units, up to and including agency-wide exclusive recognition.

Assign to the central body authority to determine the appropriate units according to legislated criteria favoring non-fragmentation.

The third possibility, also mentioned in response to the previous question—but one that would have to be approached with extreme care—would be to give the central authority oversight responsibility on agency regulatory requirements that improperly and unnecessarily restrict the scope of bargaining.

Finally, and as expressed in more detail in testimony before the Committee, any system of so-called "full collective bargaining" with strong impasse-revolving machinery would have to cover all appropriate aspects of personnel policies, including economic matters, to permit viable negotiations. However, to accomplish this with fairness to all concerned and with paramount concern for the public interest is not an easy task given the size and complexity of government, the existing labor relations structure, and the existing framework of laws covering many aspects of personnel management. This, ultimately is for the Congress to decide and the process would entail difficult decisions affecting unions, whose continued right to represent some employees would be affected, as well as Executive Branch officials. Fundamental to this decision is the degree to which Congress itself is willing to relinquish overall control of basic personnel policies contained in title 5. At a minimum, legislation should clearly identify which laws continue and which will be overridden. This is the "supersedure" issue we stressed in our testimony and the reason we urged the Committee to give full consideration to this problem and to avoid hasty decisions. There are no easy solutions acceptable to all concerned. In determining this issue, the Congress should consider where it would place authority, what would be the structure and responsibilities of a central authority, the unit structure for collective bargaining, the exemption of appropriate matters such as merit principles and management rights from the scope of bargaining, and the extent of congressional oversight in the public interest.

5. H.R. 13, H.R. 9784, and H.R. 10700 take varying approaches to broaden the matters and issues that are subject to negotiations between agency management and labor organizations representing Federal employees.

What approaches would you suggest to broaden the scope of bargaining or labor organization participation to include regulations at the agency and Civil Service Commission levels, but not to include matters of law?

*Response*

To broaden the matters not covered by law, we would have no objection to the following approaches which were mentioned above in response to the third question:

A requirement for employee organizations in the development of personnel policies or regulations that affect employees in more than one agency. (This currently is Civil Service Commission practice on matters within its authority.)

Assign to the central authority for the program oversight responsibility on agency regulatory requirements that unnecessarily restrict the scope of bargaining.

Continuation of the present provisions for national consultation rights, as reflected in H.R. 10700.

6. In lieu of the right to strike, there appears to be a general consensus that a viable alternative is necessary, both to move negotiations forward on a timely basis and to settle negotiating impasses. An alternative suggested has been compulsory arbitration with the arbitrator free to determine the settlement or to select from the last position or offer of the parties without modification. May we have your view on the above and additionally any other alternatives you may care to offer?

*Response*

While arbitration under some circumstances as one of the alternatives available has value, we do not favor compulsory arbitration as "the" means for resolving interest disputes. Rather, we believe in the value of an "arsenal of weapons" such as exists under Federal program, i.e., mediation, fact-finding with recommendations and arbitration with no advance certainty of the utilization of these mechanisms in any given case. For more effective involvement in the resolution of negotiating impasses, a third party needs considerable flexibility in dealing with a particular impasse matter. Such flexibility has been used successfully by the Federal Service Impasses Panel under the Executive order program. The Panel utilizes preliminary meetings with the parties, fact-finding, use of staff, and recommendations to the parties for the resolution of the impasse or the use of the Panel to settle an impasse by any appropriate action necessary. These flexibilities are needed to deal in the manner most appropriate to the circumstances and labor relations environment of an instant case.

By way of contrast, if there is quick recourse to binding arbitration it can stifle efforts of the parties to resolve their own differences and encourage "holding something back" for the arbitrator. Maximum opportunity for voluntary settlement of disputes after mediation or an intermediate step for fact-finding with recommendations for settlement in advance of binding arbitration should be present in any legislated procedures.

Experience at other levels of public employment with "last offer" arbitration has been mixed, at best. On the other hand, a combination of concentrated mediation and arbitration, "med-arb"—which essentially amounts to mediated fact-finding with awards tailored to what the parties are known to be able to accept and live with—has been quite successful.

In addition, less arbitration set conditions of settlement which are unworkable there needs to be specific limits on authority and established criteria for arbitration awards. For program integrity and effectiveness, a decision concerning major policy issues by an impasses panel or arbitrator should be subject to review by the central body for the program.

There could also well be provisions for checks and balances on actions and decisions of the central body when major policy matters requiring the oversight of the Congress and the highest levels of the executive branch are concerned. The extent of oversight, if any, would depend on the scope of bargaining as finally enacted.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,  
Washington, D.C., July 8, 1974.

ROY MESKER,  
Staff Director, Subcommittee on Manpower and Civil Service, Committee on  
Post Office and Civil Service, U.S. House of Representatives, Rayburn House  
Office Building, Washington, D.C.

DEAR MR. MESKER: Thank you for your letter of June 20, 1974 and the opportunity to furnish a written statement with regard to the exclusion of employees or agencies from Federal labor-management relations legislation. This statement is attached (Attachment A).

I am also replying to the three specific questions included with your June 20 letter. (Attachments B, C, and D).

We look forward to working closely with you on the development of what we are confident will be an outstanding piece of legislation.

Sincerely yours,

CLYDE M. WEBBER,  
National President.

Attachments (4).

[Attachment A]

#### EXCLUSION OF EMPLOYEES OR AGENCIES

##### *The Strange Stance of the Administration*

In the "Statement of Clyde M. Webber, National President, American Federation of Government Employees, to the House Subcommittee on Manpower and Civil Service, on H.R. 13, H.R. 10700 and H.R. 9784 (and others), bills on labor-management relations in the Federal service," dated June 5, 1974, an attempt was made to understand the underlying reason why this Administration is so anxious to exclude so many entire Federal agencies and so many entire categories of Federal personnel from collective bargaining.

Clearly, the reason is not "national security". Clearly, it is not "fiscal integrity". Clearly, it is not "conflict of interest". And, clearly, it is not "good government".

Certainly some of these particular reasons can and do apply to a sizeable number of the positions we are discussing, but these still make up only a minority of the vast number of exclusions the Administration seeks.

The AFGE believes in national security just as strongly as anyone in the Federal government; and it believes in fiscal integrity just as strongly as anyone in government. It also believes in the avoidance of conflicts-of-interest between the public duties and the private interests of public servants. Our members are public servants, citizens, and taxpayers and *insist* on good government.

The Administration knows all this, and also knows that the AFGE is reasonable and responsible on these points, whether legislative or administrative policy is involved.

Then, what does account for the desire of the Administration to put whole, tremendous sectors of civilian government out of the reach of democratic collective bargaining on conditions of employment? And out of the reach of the "bilateralism" they praise so highly?

The answer suggested in Mr. Webber's statement is simply that the Administration still prefers unilateral "command" authority to statutory collective bargaining procedures in making determinations on certain personnel policies and practices—and simply cannot resist the temptation to expand and distort out of all reason the valid concepts of "national security", "fiscal integrity", and "conflicts of interest".

In short, the Administration's vaunted support of "bilateralism" is a sham, trotted out for speeches but put back in the barn when practical matters are involved. The Administration wants simple "unilateralism" wherever it can get it.

And—perhaps even more important, every time Congress submits to this technique it too debates the essential concepts of "national security", "fiscal integrity", and "conflicts-of-interest" so as to threaten the integrity, meaningfulness



and usefulness of these concepts in legitimate contexts. These important concepts should not be used to serve opportunistic purposes. The Executive Branch must act within a framework of law and ethical responsibility, of public purpose and a sense of history. Congress should not, therefore, indulge the misuse of "National security" to thwart collective bargaining.

*The Position of the American Federation of Government Employees*

What is the AFGE position on this issue?

Mr. Webber's statement, referred to above, makes our position very clear:

"It is our firm view therefore that, in a civilian service, there is no need whatsoever to exclude any agency as a whole from coverage of a labor-management statute solely on the grounds that that agency is involved in national security affairs. The defense departments certainly are not excluded--no other agency should be, either.

"We hold the view that the only civilian employees who should be excluded are those employees who hold positions where the public interest in national security manifestly conflicts with, and supersedes, the other public interest that all Federal employees be accorded 'participation . . . through labor organizations of their own choosing, in the formulation and implementation of personnel policies and practices and matters affecting working conditions'. This 'participation' is also a matter of 'public interest and should be safeguarded unless it clearly conflicts with the public interest' in national security or fiscal integrity.

"And we think that it should not be the agency which decides this issue for itself but that the central Federal Labor Relations Authority should render the decision on the basis of standards developed in an objective manner. The agencies desiring to 'exclude' employees should petition the Authority; but the Authority should have the final decision on the basis of clearly defined standards applicable to all situations".

*The Proposal of the American Federation of Government Employees*

The AFGE proposes that employees in the Panama Canal Zone be included in the coverage of the Federal labor relations statute. We propose that personnel in the Foreign Service of the United States be included. We propose that "competitive service" employees outside the Executive branch be included. We say flatly that there is no valid reason for the exclusion of any of these citizens.

We propose that (1) uniformed military personnel and (2) non-U.S. citizen personnel in foreign countries be excluded from coverage by a Federal labor-management relations statute. (In the latter case, of course, non-U.S. citizen employees of a U.S. government agency in a foreign country have collective bargaining rights in accordance with the laws of their own country and the terms of the operative treaty or executive agreement between the host country and the United States.)

We propose that employees of the Postal Service and of the TVA be excluded at this time because they are now covered by adequate labor-management relations systems.

Finally, the AFGE proposes that statutory authority be given to the proposed Federal Labor Relations Authority to determine any additional exclusions of the kind involved here, upon petition and adequate justification by an agency head and after a finding by the Authority that the special national security, fiscal integrity, or other public interests involved are substantial and both (1) outweigh the countervailing public interest in democratic collective bargaining; and (2) cannot be accommodated within the flexible statutory labor-management relations framework in the Federal service.

The AFGE will be happy to submit proposed statutory language to effect these proposals.

Attachment B

*Question.*—In lieu of the right to strike, there appears to be a general consensus that a viable alternative is necessary, both to move negotiations forward on a timely basis and to settle negotiating impasses. An alternative suggested has been compulsory arbitration with the arbitrator free to determine the settlement or to select from the position or offer of the parties without modification. May we have your views on the above and, additionally, any other alternatives you may care to offer?

*Answer.*—The AFGE position is consistent with that of the AFL-CIO, as set forth on page 13 of Mr. Biemiller's statement before your subcommittee on June 5, 1974.

We recognize that the Congress may decide that an alternative to the right to strike is needed in the public sector. Mr. Biemiller suggested: "Voluntary inclusion in agreements of commitments by the parties to submit issues . . . to final and binding arbitration when the parties are not able to resolve them through negotiation or collective bargaining" (including, of course, mediation and conciliation services).

This is the general method proposed in H.R. 13.

We must also state that such arbitration is only part of the answer to the inequalities and imbalances caused by the denial to employees of the Federal government of the right to strike; another essential part of the answer is statutory provision for union security through an agency shop or the payment of representation fees by non-union members whose interests are represented by the union.

Attachment C

*Question.*—Under H.R. 13, H.R. 9784, and H.R. 10700, employees of the central bodies that would administer the law could be represented by labor organizations, thereby becoming a party-at-interest in matters coming before the central body as well as becoming involved in union-management dealings with the central body. This would appear to contain the seeds of conflict of interest.

A. Should these employees be removed from coverage under these bills? Why?

B. If not excluded, what alternatives would you suggest?

Answer.—A. No.

B. Those who see these apparent seeds of conflict of interest should describe exactly what they think these seeds might grow into, i.e., what possible actual conflicts of interest do they foresee? These "actualities", as distinct from "phantoms", can then be either prohibited by the statute itself; or the Authority can be authorized to prohibit them specifically by regulation, in accordance with general conflict-of-interest requirements of the statute; or the central bodies concerned and the unions representing their employees can agree to prohibit such actual conflicts-of-interest in the collective bargaining agreements—depending upon when such actual conflicts are identified and what seems to be the most sensible way of eliminating or minimizing them. (Where the public confidence is involved, such prohibitions might extend beyond actual conflicts to those that the general public would surely regard as "conflicts" even if they were not.)

In the conflict-of-interest area, experience has taught us that one must be clear as to what one is talking about, because in one case the requirement of public disclosure of the possible conflict is an appropriate safeguard, where in another case, at the other extreme, the imposition of a prison sentence and a heavy fine may be needed to protect the public interest against violations.

In any event, we believe that Federal management sees all too many vague, hypothetical, tangential, and far-fetched reasons for excluding people, agencies, "management rights", elements of personnel management, ad infinitum, from collective bargaining. Upon careful examination, most of these reasons, when not simply cynical or opportunistic, turn out to be either products of over-heated imaginations or matters which can be negotiated by reasonable and intelligent men.

It is time, we think, for Federal management to become less soft headed and faint-hearted about matters which are really not all that horrifying. At the other end of the scale, of course, we would like to see Federal managers exchange dead cynicism for lively skepticism—and let us all move into the environment of modern management.

[Attachment D]

*Question.*—Executive Order 11491 provides for an agency system of intra-management communication and consultation with its supervisors or supervisory associations. H.R. 13, H.R. 9784, and H.R. 10700 are silent on such relationships. What are your views on the inclusion of this matter in labor-management relations legislation? How should the subject be handled?

Answer.—Associations of supervisors should have no status under either an Executive order or a public statute dealing with labor management relations. The inclusion of such associations for such purpose contradicts the conflict-of-interest basis for their original exclusion from recognition. This is not to say that such associations cannot exist or that they may not have a role to play and

some rights; it is merely to say that such status as they may have should neither be established nor confirmed by a public labor relations statute, i.e. a labor-management relations statute should deal with relations between management and labor unions only.

In addition, it is important to point out that "supervisors" should be defined along the lines proposed in H.R. 13. This would not only be fairer to the individual employees affected by the redefinition and more consistent with the real world of white-collar employment in the Federal government, but it would minimize the serious management problem to which your question is addressed. That is, real management personnel would be able to communicate among themselves through the many channels now available to managers; and management would be able to communicate with non-management personnel through their employee organizations. The problem now, of course, is that Federal management has no such effective ways to communicate with the tens of thousands of rank-and-file employees whom they arbitrarily categorize as "managers" ("supervisors") simply to exclude them from collective bargaining and for no other purpose.

[EXTRACT]

NATIONAL UNION OF COMPLIANCE OFFICERS, INDEPENDENT,

July 13, 1974.

Hon. DAVID N. HENDERSON,  
U.S. House of Representatives,  
Rayburn House Office Building,  
Washington D.C.

DEAR CONGRESSMAN HENDERSON: The Executive Board of NUCO would like to take this opportunity to submit a paper regarding the topic of Federal Labor Management Relations legislation.

National Union of Compliance Officers Independent represents the employees of Labor Management Services Administration, U.S. Dept. of Labor, who are charged with the administration of EO 11491. Our independent organization was recognized in 1971 and has gained a variety of experiences from EO 11491 both as a union and as individuals involved in administration of Order. We have been asked by Mr. Paul Newton, Associate Staff Assistant to respond to the question of whether employees of the Federal Labor Relations Authority should be allowed to organize. Our response to this question is emphatically in the affirmative, and we hope to be able to offer some convincing arguments to support our position. NUCO Ind. believes the stated purpose of all labor relations laws in the U.S. is to encourage collective bargaining, to reduce problem areas between labor and management, and to create a suitable vehicle for grievance resolution via the labor organization.

In addition, policy has been stated, so as to leave the question of representation to the employees. The question of unionism has been, and should continue to be one that is left as a matter of choice to the individual employee. With this as our main position we can say that FLRA employees should have the right to chose—just as any other federal employee—whether they are engaged, in police work, diplomatic work or the administration of a labor management relations law.

There has already been considerable experience garnered by the National Labor Relations Board and LMSA, both of which have administrative responsibility for a labor law and have labor unions representing their employees. It is our experience and we know that of the National Labor Relations Board Union, that one can be organized yet remain impartial while investigating someone else's dispute. We believe that it is illogical to assume that an individual's union membership would necessarily prejudicially affect impartial performance of his duties.

On the contrary, if there is any correlation between an employee's union membership and his administration of a labor relations law, we feel that the quality of such administration is directly and positively enhanced by this experience of the administrator. (Thus we argue that a person who has gained knowledge through his own labor experience can best administer a labor relations law.) We encourage the fullest participation by all federal employees in any federal labor management relations law. If there is to be an exclusion of FLRA employees we hope that at the most, such employees would only be excluded from being represented by unions representing other employees. Departing now from the question of unionization by the employees of the FLRA or FLRB, we would

like to express our views on the EO 11491 as we know it and upon the bills being considered by your committee.

NUCO Ind. supports the legislation introduced by Congressman Brasco and Senator McGee. We feel that this is the legislation that would most nearly give the federal employees parity with his counterpart in the private sector. At this time, we also wish to point out that several states have stolen the march on the federal government by passage of strong labor management statutes.

We do not wish to detail our support of HR 13, section by section instead we will only point out areas where we disagree with the provisions of that bill:

Sec. 201 (b) : Should, we feel, allow the FLRA employees to organize but only on an independent basis.

Sec. 201 (b) : May be read in its present form to include supervisors and managers under the Act. We do not feel that a labor-relations law should cover supervisors and managers.

Sec. 201 (j) : We do not agree with such a mechanistic approach to the definition of supervisor—instead we feel that the LMRA of 1947 should be tracked in this area.

Sec. 201 : Does not speak to the problem of guards and a possible conflict of interest. We recommend guards form in their own organizations.

Sec. 1401 : We feel that if federal labor organizations are to have the advantages conferred by a labor law that they must also meet the standards of Landrum Griffin as do unions in the private sector.

We wish to thank you for giving us the opportunity to address ourselves to this vital area of concern to all federal employees. If you desire further amplification or discussion concerning our position in this matter, please contact me at (502) 582-5160 or (502) 636-1266.

Sincerely,

RICHARD J. ROSS, *President.*

PORTIONS OF A RESEARCH PAPER PREPARED FOR THE NATIONAL RIGHT TO WORK COMMITTEE BY THE OPINION RESEARCH CORP., REGARDING THE PUBLIC ATTITUDES TOWARD RIGHT TO WORK LAWS—APRIL 1974

#### FOREWORD

This report presents the findings of a personal interview research survey conducted among 2,173 men and women, 18 years of age or over, living in private households in the continental United States.

Interviewing for this Caravan survey was completed during the period March 22 through April 10, 1974, by members of the Opinion Research Corporation national interviewing staff. All interviews were conducted in the homes of respondents.

The most advanced probability sampling techniques were used in the design and execution of the sample plan; therefore, the results may be projected to the total U.S. population of men and women 18 years of age or over.

Only one interview was taken per household, regardless of the number of people 18 years of age or over in the household. Weights were introduced into the tabulations to ensure proper representation in the sample.

The Technical Appendix at the end of the report describes in detail the sampling methods and other procedures employed in the survey. Also described are characteristics of the sample and sampling tolerances of survey results.

As required by the Code of Ethics of the American Association for Public Opinion Research, we will maintain the anonymity of our respondents. No information can be released that in any way will reveal the identity of a respondent. Also, our authorization is required for any publication of the research findings or their implications.

Caravan Surveys, a division of Opinion Research Corporation, is a syndicated, share-cost data collection vehicle. Caravan reports, such as this one, are presented in tabular form. Interpretive analysis is provided by Caravan only if specifically contracted for by the client.

#### INTRODUCTION TO DETAILED FINDINGS

The tables read across. Except for the first two columns, all figures in the body of the tables are percentages. The unweighted number of interviews appears in the column headed "UNWTD" and the weighted numbers—tabulation units resulting from the weighting process—appear in the column headed "WTD."

Some of the percentage distributions are based on small numbers of interviews. The reader is urged to interpret them with caution.

The weighted numbers for sex and city size may not add to the total because they are subject to the limitation of the computer to round weighted numbers. In all demographic groups—other than sex, city size and region—the unweighted numbers may not add to the total number of respondents because they are dependent upon a respondent's answer and, therefore, do not include the "Not Reported."

*Technical note*

The computer program provides for forcing percentage distributions to 100% only under certain circumstances: When the question is a single response question and the question is asked of the total sample.

In all other cases, the computed percentage distributions are not forced to add to 100%, or the percent of respondents who were asked the question. (For example, see table for Question I.5.)

The following definitions are provided for some of the sidebreaks by which the data are analyzed. Other sidebreaks are self-explanatory.

*Occupation* refers to the occupation of the chief wage earner in the household.

*City size:*

*I. Non-Metro—*

Rural: under 2,500 population, not in a metropolitan area.

Urban: places with 2,500–50,000 population, not in a metropolitan area.

*II. Metro—*

50,000–999,999: places in a standard metropolitan statistical area of 50,000–999,999 population.

1,000,000 or over: places in a standard metropolitan statistical area of 1,000,000 or more population.

Population figures are from the 1970 Bureau of the Census. Note that for all places in a metropolitan area the criterion of size is the population of the metropolitan area.

*Geographic regions include:*

Northeast: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania.

North Central: Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas.

South: Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, Texas.

West: Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, California.

*Income* is total family income in 1973, before taxes.

*Right to Work Public* includes respondents who say they have heard of Right to Work laws.

*Thought Leader Scale*

The thought leader scale defines a respondent in terms of his intake and output of information. A respondent's initiative is identified through scoring a special question series (see Questions Z1 through Z3, Interviewing Materials) that have to do with free-time activities, subjects talked about, and participation in organizations. The scoring method uses specially developed weights, based on Opinion Research Corporation research.

"Thought Leaders" (those respondents who score highest on the thought leader scale) are much more likely than the public in general to be involved in such free-time activities as reading newspapers, books, magazines and journals, or to discuss subjects of worldwide scope. Also, more of the "Thought Leaders" are active in various organizational activities than is the case among the public as a whole.

As such, "Thought Leaders" can be viewed as an early warning device: they are faster to change than are other people, they are more sensitive than others to the effects of public events, and their attitudes generally reflect what is beginning to develop among the public at large.

TECHNICAL APPENDIX

*Opinion Research Corporation's Master Sample*

Opinion Research Corporation's master sample is based on a new probability sample design, prepared in consultation with J. Stevens Stock of Marketmath, Inc., and modified and updated by ORC.

The essential characteristic of probability sampling is that, for each person in the population under study, the probability that he will be included in the sample can be specified. This means that the degree or reliability of any finding from a study based on a probability sample can be estimated mathematically.

This new sample design is a major improvement over standard area probability designs now in common use. These areal methods depend upon the use of maps showing geographic segments for which rough population estimates can be made. These maps are often out of date and otherwise inaccurate, and population estimates are frequently unreliable for small geographic areas, particularly as time passes from one census to another. The new sampling method eliminates these important problems of traditional probability sampling by using current address directories as the basis for a system of defining interviewing starting points—a system which, of course, includes in the sample households not in the directory as well. The new method is both statistically and administratively as efficient as possible, providing the most reliable data for any given expenditure.

The ORC master sample consists of 360 counties in the contiguous United States. This master sample of 360 counties comprises, in fact, six subsamples of 60 counties each. Each of these subsamples is itself a national probability sample. Depending on the needs of any particular study, the master sample can be used as a whole, or any combination of the six subsamples can be used.

To construct the sample, the counties within each state were arranged in order of descending population size; and all the states were grouped in geographical order from Maine to California. Sixty counties were then chosen by statistical procedures that insure representative geographical distribution. This process was repeated to obtain the six subsamples that make up the master sample of 360 counties.

The next step in the sampling design was to select an area from each of the 360 counties in the master sample. Again, a probability sampling method was used to select, within each county, a minor civil division (MCD) as defined by the Bureau of the Census. A minor civil division may be a town, township, city, or part of a city. The probability that any particular minor civil division was selected in a county was proportional to the population of that minor civil division. Thus, the larger a minor civil division, the greater the likelihood that it be selected. The minor civil division, then, is the primary sampling unit.

Once the MCD has been selected, the next step is the determination of those households where interviewing is to take place. Under the ORC National Probability Sample procedure, any current listing of household locations, even if incomplete, constitutes the first stage of the sampling plan. From this list of households one or more addresses are chosen at random. Each of these addresses defines the place that the interviewer begins following the interviewing site selection process. The interviews in a cluster or "neighborhood" do not begin at the household selected from the list, but at the adjacent household, which may or may not be on the original list. Thus, the list does not define the universe of households in an MCD, but rather the list of households adjacent to possible starting points. Depending on the number of households contacted from each starting point, the number of starting points chosen, and the criteria for being included on the original list, every household in the MCD has a known, or knowable, probability of being included in the ORC sample.

Because they are the most up-to-date and the most complete listing of addresses available, telephone books are the sources of locations next to interviewing starting points when general public surveys are being done.

The specific persons to be interviewed are selected as follows:

(1) A certain number of starting points are selected from the telephone books covering the minor civil divisions, or communities, selected. The starting points are chosen in a manner that each household, within the minor civil division, listed in the phone book has an equal chance of being selected.

(2) Each starting point selected determines a group of households, called a "cluster," in which interviews are conducted. This cluster of households includes both with and without listed telephones. The first household in which an interview is conducted is the household immediately to the left of the household selected from the telephone book as the starting point. Thus, the first household can be one either with or without a telephone.

(3) The interviewer conducts an interview in the first household and then works through the group of households following a prescribed rule. The interviewer continues working through the cluster until interviews have been completed in a preassigned number of households.

(4) A respondent-selection procedure determines for the interviewer which person to interview in any given household. Every eligible respondent in the household has the same chance to be interviewed as any other eligible respondent. The interviewer is not allowed to make any substitutions.

Once all interviews have been completed, weighting procedures are employed to insure that the sample properly represents the population from which it was drawn.

This sampling procedure is rigorous in concept and practice and allows for the exact determination of the statistical precision of any finding.

#### *Sample Characteristics, April 1974 Caravan*

The data in the table below compare the characteristics of the weighted <sup>1</sup> Caravan sample with those of the total population, 18 years of age or over. The table shows that the distribution of the total sample parallels that of the population under study.

	[In percent]					
	Total		Men		Women	
	Population <sup>1</sup>	Caravan sample	Population <sup>1</sup>	Caravan sample	Population <sup>1</sup>	Caravan sample
Years of age:						
18 to 29.....	29	28	30	29	28	28
30 to 39.....	17	17	17	16	17	17
40 to 49.....	16	16	17	16	16	16
50 to 59.....	16	16	16	16	16	15
60 or over.....	22	23	20	23	23	24
Race:						
White.....	89	88	89	87	89	88
Nonwhite.....	11	12	11	13	11	12
City size: <sup>2</sup>						
Nonmetro.....	27	27				
Metro.....	73	73				
Geographic region:						
Northeast.....	24	24	24	25	24	24
North-central.....	27	27	28	27	27	28
South.....	31	31	30	31	31	30
West.....	18	18	18	17	18	18

<sup>1</sup> Source: Latest data from the U.S. Bureau of the Census, regular and interim reports.

<sup>2</sup> Data are not currently available from the U.S. Bureau of the Census for city size by sex.

#### *Reliability of Survey Percentages*

Results of any sample are subject to sampling variation. The magnitude of the variation is measurable and is affected by the number of interviews and the level of the percentages expressing the results.

The table below shows the possible sample variation that applies to percentage results reported from the Opinion Research Corporation sample. The chances are 95 in 100 that a Caravan survey result does not vary, plus or minus, by more than the indicated number of percentage points from the result that would be obtained if interviews had been conducted with all persons in the universe represented by the sample.

<sup>1</sup> Weights were introduced into the tabulations to ensure proper representation of the interviews in the sample.

APPROXIMATE SAMPLING TOLERANCES APPLICABLE TO PERCENTAGES AT OR NEAR THESE LEVELS

[In percent]

Size of sample on which caravan survey result is based (number of interviews)	10 percent or 90 percent	30 percent or 70 percent	50 percent
2,000.....	2	3	3
1,000.....	2	4	4
500.....	3	5	5
250.....	5	7	8
100.....	7	11	12

*Sampling Tolerances When Comparing Two Samples*

Tolerances are also involved in the comparison of results from different parts of any one Opinion Research Corporation sample and in the comparison of results between two different ORC samples. A difference, in other words, must be of at least a certain size to be considered statistically significant. The table below is a guide to the sampling tolerances applicable to such comparisons.

Size of samples compared	Differences required for significance at or near these percentage levels <sup>1</sup>		
	10 or 90 percent	30 or 70 percent	50 percent
2,000 and 2,000.....	2	4	4
2,000 and 1,000.....	3	4	5
1,000 and 1,000.....	3	5	6
1,000 and 500.....	4	6	7
500 and 500.....	5	7	8
500 and 200.....	6	9	10
200 and 200.....	7	11	12
200 and 100.....	9	14	15
100 and 100.....	10	16	17

<sup>1</sup> Based on 95 chances in 100.

*Quality Control Measures*

Quality control measures are applied in every phase of the Caravan survey. Specialists in many fields are available for consultation with the Caravan survey director in the development of the questionnaire.

Interviewers are hired and trained, in person, to staff the probability sample, and their work is regularly checked for accuracy and validity.

Questionnaires are prepared for data processing by experienced coders, under the supervision of the survey director.

The processing of data is subject to rigorous internal checks designed to detect both machine and human error.



INTERVIEWING MATERIALS

ASK EVERYONE

SECTION L

Now to change the subject --

SHOW EXHIBIT L-1

L1. Which of these arrangements do you favor for workers in industry?

- 1 A MAN CAN HOLD A JOB WHETHER OR NOT HE BELONGS TO A UNION
- 2 A MAN CAN GET A JOB IF HE DOESN'T ALREADY BELONG, BUT HAS TO JOIN AFTER HE IS HIRED
- 3 A MAN CAN GET A JOB ONLY IF HE ALREADY BELONGS TO A UNION
- 4 NO OPINION

L2. Do you think there is or is not too much power concentrated in the hands of labor leaders of the big unions in this country?

- 1 YES, THERE IS
- 2 NO, IS NOT
- 3 NO OPINION

L3. In some places in order to hold a job you have to belong to the union and pay dues. Do you think union officials should be permitted to use this dues money to campaign for political candidates, or should this be forbidden?

- 1 SHOULD BE PERMITTED
- 2 SHOULD BE FORBIDDEN
- 3 NO OPINION

L4. Have you heard of state laws called "Right to Work" laws?

- 1 HAVE HEARD OF
- 2 HAVE NOT HEARD OF
- 3 DON'T KNOW

(IF "HAVE HEARD OF" ON Q. L4, ASK):

L5. Are you in favor of Right to Work laws in states like this one, or are you opposed to Right to Work laws?

- 1 IN FAVOR OF
- 2 OPPOSED TO
- 3 NO OPINION

ASK EVERYONE

L6. Some states have passed Right to Work laws which provide that a worker cannot be discharged from his job for either joining or not joining a union. If you were asked to vote on such a law, would you vote for or against it?

- 1 WOULD VOTE FOR
- 2 WOULD VOTE AGAINST
- 3 NO OPINION

L7. Whether you are personally for Right to Work laws or not, do you think the federal government should or should not allow each state to decide whether it wants to pass such a law?

- 1 SHOULD ALLOW
- 2 SHOULD NOT ALLOW
- 3 NO OPINION

L8. The Right to Work laws we have been talking about are permitted under Section 14(b) of the Taft-Hartley Act.

SHOW RESPONDENT EXHIBIT L-8

If Congress keeps Section 14(b) of the Taft-Hartley Act, it means that states can continue to have Right to Work laws if they want. If Congress repeals Section 14(b) of the Taft-Hartley Act, it means that states cannot have Right to Work laws. Which do you think Congress should do?

- 1 KEEP SECTION 14(b)
- 2 REPEAL SECTION 14(b)
- 3 NO OPINION

SECTION Z

(DRAW A CIRCLE AROUND THE NUMBERS TO SHOW YOUR ANSWERS.)

Z1. Please circle the numbers of all of the following that you do quite a bit of in your free time.

- |  |                                  |
|--|----------------------------------|
| 1 TRAVEL   | 11 WATCH TELEVISION              |
| 2 VISIT OR ENTERTAIN FRIENDS OR RELATIVES                        | 12 WORK IN THE YARD OR GARDEN    |
| 3 READ DAILY NEWSPAPERS  | 13 GO TO THE MOVIES              |
| 4 PARTICIPATE IN SPORTS  | 14 LISTEN TO MUSIC               |
| 5 WATCH SPORTS EVENTS  | 15 ATTEND PLAYS, OPERA OR BALLET |
| 6 READ WEEKLY NEWS MAGAZINES                                     | 16 READ BOOKS                    |
| 7 READ MAGAZINES LIKE READER'S DIGEST, McCALL'S, SEVENTEEN, ETC. | 17 OTHERS _____                  |
| 8 HOBBIES LIKE WOODWORKING, PHOTOGRAPHY, ETC.                    | _____ (Explain)                  |
| 9 LISTEN TO THE RADIO  |                                  |
| 10 READ BUSINESS OR PROFESSIONAL JOURNALS                        |                                  |

Z2. When you get together with other people, which several of the following things are you likely to talk about?

- |                                   |                        |
|-----------------------------------|------------------------|
| 1 YOUR WORK                       | 11 MUSIC, ART, ETC.    |
| 2 RELIGION                        | 12 COMMUNITY PROBLEMS  |
| 3 POLITICAL AFFAIRS               | 13 GOVERNMENT POLICIES |
| 4 WORLD AFFAIRS                   | 14 LABOR UNION MATTERS |
| 5 YOUR FAMILY                     | 15 OTHERS _____        |
| 6 BUSINESS CONDITIONS             | _____ (Explain)        |
| 7 CONSUMER AFFAIRS/PROBLEMS       |                        |
| 8 ENVIRONMENT, ECOLOGY, POLLUTION |                        |
| 9 NATIONAL PROBLEMS               |                        |
| 10 SPORTS                         |                        |

Z3. Are you very active in any of the following types of organizations? Circle all those in which you are very active.

- |  |   |
|--|---|
| 1 PROFESSIONAL ASSOCIATION   | 11 ENVIRONMENT-ORIENTED GROUP OR ORGANIZATION |
| 2 CHURCH OR RELIGIOUS GROUP OR CLUB  | 12 CONSUMER AFFAIRS/PROBLEMS GROUP            |
| 3 POLITICAL ORGANIZATION   | 13 OTHERS _____                               |
| 4 SERVICE CLUB SUCH AS ROTARY, LIONS, JUNIOR LEAGUE                            | _____ (Explain)                               |
| 5 SPORTS CLUB LIKE A COUNTRY CLUB, GOLF CLUB, SWIMMING CLUB, ETC.              | 14 NONE OF THESE                              |
| 6 LABOR UNION OR ORGANIZATION  |   |
| 7 FRATERNAL OR VETERAN'S ORGANIZATION SUCH AS ELKS, LEGION, ETC.               |   |
| 8 CIVIC OR LOCAL ASSOCIATION SUCH AS SCHOOL BOARD, COMMUNITY ASSOCIATION, ETC. |   |
| 9 DRAMA, ARTS, OR CULTURAL GROUP, ETC.   |   |
| 10 BUSINESS ASSOCIATION  |   |

THANK YOU  
PLEASE RETURN QUESTIONNAIRE TO INTERVIEWER

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

May 17, 1974

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post Office  
and Civil Service  
U.S. House of Representatives  
207 Cannon House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the Commission's views on H.R. 10700, a bill "To provide for improved labor-management relations in the Federal service, and for other purposes."

As we have previously reported, we do not believe there is a demonstrated need for a legislated system for labor-management relations at this time. While we do not object in principle to a statutory program, we prefer and support the present labor-management system based upon Executive Order. This system has proven to be sound, viable, and amenable to necessary change based on pertinent experience.

In proposing a statutory base for Federal labor-management relations, H.R. 10700 would replace the existing system originally provided under Executive Order 10988 in 1962 and updated by Executive Order 11491 in 1969 with Amendments in 1971. As discussed in our letter of May 23, 1973, commenting on H.R. 13, the present labor-management relations system has been sound and of benefit to both the efficient administration of government operations and the well-being of Federal employees. Third-party machinery for the resolution of union-management disputes has facilitated the orderly and constructive relationships between the parties. And through consultation and negotiation processes and agreements, employees have the opportunity to participate in the formulation and implementation of personnel policies and practices affecting conditions of their employment. On the whole, this system has produced increasingly effective union-management understandings that have accommodated employee needs and improved the operation of Federal agencies.

An important and major strength of the present system is that it is based upon administrative direction by Executive order. This has permitted the making of necessary, periodic adjustments to problems evidenced through operating experience. Further changes are expected as a result of the Federal Labor Relations Council's current general review of the program. Unions, agencies and other interested parties have provided position papers and testimony on various identified program issues.

In our review, we noted that H.R. 10700 incorporates many of the approaches and mechanisms already embodied in Executive Order 11491. Thus, it presents a substantially more reasonable approach and balance to the issue of labor relations legislation, and particularly to the rights and interests of the general public, employees, unions and management than other bills introduced in the 93rd Congress. Nevertheless, it contains a number of provisions not consistent with the existing, orderly, successful system.

The provision in the bill, to which we object most strenuously, and which we consider poses the most serious problems both in structuring a balanced, effective labor-management relations program and in maintaining effective and responsible operations of Federal agencies is section 7107(g). This establishes a "Federal Labor Relations Board" to make determinations on personnel management policies and regulations that relate to employees in more than one agency. This provision alone would gravely weaken--if not effectively usurp--essential authorities historically delegated by the Congress to Federal agencies and officials for fulfilling their responsibilities. Empowering the Board, as proposed and structured, to determine Government-wide policies that affect Federal employees would seriously cripple management's capability to manage. The decisions would not even be made bilaterally by management representatives authorized to, and accountable for, making them and employee representatives specifically elected to participate in their determination. Instead, these decisions would be made by majority vote of the eleven members of the Board, with the Chairman of the Board resolving ties. This would mean that one person--answerable to himself alone--would have the power to determine a vast range of Government-wide policy without responsibility to any authority including the President, the Congress, the Civil Service Commission, or the heads of departments and agencies. Such a concept plainly is not in the public interest.

Moreover, the Board arrangement would be impracticable to administer. The wide range and volume of subjects and material that the various agencies of the Government would be required to submit for policy determination, the very real prospect of extended quasi-negotiations on many issues, the provision for introduction of issues by labor organizations and the need to operate within the specified timeframe in section 7107(g)(6) for the consideration of proposals, all would contribute to nearly continuous and piecemeal bargaining, periodically interrupted by time constraints unrelated to priority issues, workload or status of negotiations. This process and environment would seriously jeopardize deliberation, decision making, and implementation of Government-wide policies. This proposal would permanently damage the capability of the Civil Service Commission to function and to manage as the central personnel agency of the Government, and to administer the inherent Civil Service merit system principles. More important--though just as inescapable--it would disrupt, frustrate and perhaps on some occasions even paralyze the functioning of Government generally, since vital operating regulations of virtually all agencies would be affected directly.

In addition, there are other significant issues and problems stemming from this provision of the bill. For example, would the Board have authority to determine personnel policies and practices for all employees, including (1) non-represented employees and (2) employees excluded from coverage? If so, what would be the justification for this?

All of this is not to say that employees, through their representatives, should not have input in policies of Government-wide application. To the contrary, the Commission long has acknowledged this need and regularly and extensively has, on its own initiative, consulted employee organizations in the development of Government-wide personnel policies.

The Commission also deals with employees through formalized, structured arrangements for labor organization input in the areas of pay and fringe benefits. This includes the Prevailing Rate Advisory Committee under the Federal Wage System, the Federal Employees Pay Council, and the Health Benefits and Life Insurance Advisory Committees.

As with the provision for dealing with matters of Government-wide application, we also are opposed to the mechanisms in section 7107(e)(3) and (4) for negotiations on agency regulations issued by authorities above the level of recognition. Although it is desirable to bring more closely together the level of recognition and the locus of agency authority so as to make possible more meaningful negotiations, the arrangements proposed for dealing with this matter are not satisfactory. First, they would result in bargaining rights where there is no appropriate bargaining unit and the employees affected have had no opportunity to express their views. In addition, as we understand the concepts involved, it would be extremely impracticable for agencies to implement and administer the provisions. Piecemeal and continuous negotiations could result. This would be unworkable in terms of the capability of management to effectuate central policies where there is a need for uniformity throughout the agency or in major organizational segments. Furthermore, it appears that to administer the provisions of the section in regards to a given personnel issue, an agency would be required to complete a series of calculations and proportional determinations to conclude how many employees would be affected, respective representation by unions, and if a majority is involved. In a given instance it appears that an agency would be required to conduct negotiations or consultation with different labor organizations on the same issues. This would be chaotic and impracticable from the vantage points of meaningful and constructive negotiations, labor-management stability in general and sound personnel management practices needed for mission accomplishment in the public service.

We also note that certain other provisions of H.R. 10700 serve to unnecessarily constrain the scope of bargaining: Section 7108(a) mandates that agencies withhold dues allotments at no cost to the labor organization or employee involved; section 7113(a) requires that employees representing labor organizations in negotiations be on official time with little

apparent limitation; section 7113(c) provides that the Federal Labor Relations Authority shall determine if official time will be granted to employees participating on behalf of a labor organization in any proceedings before the Authority, section 7112(a)(4) requires that arbitrators be selected from lists furnished by the Federal Mediation and Conciliation Service; and sections 7112(a)(3) and 7112(b) require that negotiated grievance procedures provide for final and binding arbitration. As a practical matter, such issues should be left to the parties for bargaining arrangements that best accommodate to their particular situations.

Problems also are presented by the establishment of a Federal Labor Relations Authority "to administer the functions proposed by H.R. 10700 (sections 7104 and 7105)". Obviously, if a legislated program is enacted, there will be a need for a central authority. However, its makeup, structure, responsibilities and authorities would have to be considered carefully. Furthermore, to abandon the substantial body of precedents and procedures that have evolved under E.O. 11491 would be unreasonable and disruptive. Equally important is the range of authority granted for policy setting, as it affects an agency head's responsibility to manage in the accomplishment of assigned mission. Concern for the public interest should not be divorced from those officials held accountable by the electorate.

To assist the parties in settling impasses, section 7111(b) provides that at the request of either party, the Authority is required to establish a three-person panel. In our opinion, this mandating of a panel would serve to limit the flexibility needed in consideration of a particular impasse matter. This flexibility, which has proved successful under the Executive order program, includes preliminary meetings with the parties, factfinding, use of staff, and recommendations to the parties for the resolution of the impasse or the use of a panel to settle the impasse by appropriate action. Such flexibilities are needed to deal in the manner most appropriate to the circumstances and labor relations environment of an instant case.

In addition, as we interpret section 7111(d) the action of an ad hoc panel is final and not subject to further review. Except for negotiability questions it appears that the Authority could not review a panel's decision on an impasse concerning major policy issues. We believe that the absence in the bill of a provision for such review by the central body responsible for administration of the program could adversely affect the integrity and effectiveness of the program. In addition, the bill lacks provisions for checks and balances on actions and decisions of the Authority when major policy matters requiring the oversight of the Congress and the highest levels of the executive branch are concerned.

The extent of necessary oversight, if any, would depend on the scope of bargaining as finally enacted. It is precisely because of the membership on the Federal Labor Relations Council, as constituted under Executive

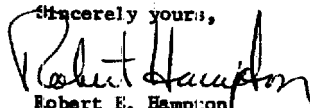
Order 11491--that is, the Chairman of the Civil Service Commission, the Secretary of Labor and the Director of the Office of Management and Budget--that such unlimited authority is granted under the order's dispute-resolution machinery to take whatever actions are necessary to achieve resolution.

Regarding other provisions of the bill, there are a number that are substantially similar to those in the present program based on Executive order, and thus do not require elaboration in this report. For example: the right of employees to join or not join a labor organization; to organize and be represented through collective bargaining; to assist and represent labor organizations, with exceptions applying to supervisory and managerial employees as well as other employees where there would be conflict or apparent conflict of interest; while reserving to Federal agencies the authority that management must retain to effectively administer Federal programs and services and accomplish mission in the public interest. Such provisions form the very foundations of E.O. 11491 and of predecessor orders, and are essential in the context of the unique characteristics of the Federal service.

In sum, while there are a number of similarities in some provisions of the bill to the existing program, the bill contains features which are, in our view, unsatisfactory and unacceptable, and not consistent with a sound and viable program of labor-management relations in the Federal service. In addition, there has been no demonstrated need for the substitution of a statutory base for the existing program.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 10700 would not be in accord with the program of the President.

By direction of the Commission:

Sincerely yours,  
  
Robert E. Hampton  
Chairman

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MAY 21 1974

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post  
Office and Civil Service  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to the Committee's request for the views of this Office on H.R. 10700, "To provide for improved labor-management relations in the Federal Service, and for other purposes."

H.R. 10700 would establish by statute a system, administered by a three-member Federal Labor Relations Authority, to govern the conduct of Federal sector labor-management relations. The bill would promulgate a statement of congressional policy with respect to employee rights and the responsibilities of the Federal Government as employer. It would create a Federal Labor Relations Board to review all agency personnel policy regulations which have Government-wide application. It would provide special third-party machinery for resolving disputes arising from the collective bargaining process. H.R. 10700 would entirely displace the existing system of Federal labor-management relations.

As indicated in our earlier report on H.R. 13, we are opposed to a statutory labor-management system for the Federal service as inappropriate because it is premature.

We endorse the right of Federal employees to participate in the formulation of personnel policies and procedures affecting the conditions of their work, consistent with the public interest. We, nonetheless, continue in the strong belief that a statutory system would be unresponsive to the present environment of development and expansion which characterizes collective bargaining in the Federal system.



It is clear that unions have benefited under the current Executive order system which governs collective bargaining in the Federal Government. In part, this stems from the government's strict adherence to self-imposed neutrality as an employer in elections and organizing activities. Such management neutrality creates an inherent imbalance in the Federal system which is not imposed in private sector labor relations. In addition, we believe that the system has worked well because of its flexibility -- the ease with which it can respond to the dynamics of Federal sector union-management relations. This is illustrated by the history of the program and the growth of union participation.

The initial policy, formalized by Executive Order No. 10988 of January 1962, assigned ultimate responsibility to the heads of agencies. Later, with experience, both management and the unions recognized a need to revise governing policies. In October 1969, accordingly, Executive Order No. 11491 moved the program closer to the prevailing private sector concept of labor-management relations by establishing the Federal Labor Relations Council to provide a third-party mechanism for program administration and policy guidance. The new order reflected the unique character of public service by establishing a procedure for resolving bargaining disputes in lieu of strikes by Federal employees. It also recognized the paramount obligation of the government, as employer, to serve the public interest. Thus, it reserved for management those rights which are essential to carrying out the missions of Federal agencies.

The characteristic responsiveness of the present system is demonstrated by the Council's ongoing review and evaluation of the program, which has been under way for several months. The periodic review of the program is mandated by the order. An earlier review produced changes in the program in 1971, when the order was amended to expand the permissible area of negotiation and to refine the applicability of grievance procedures. The current effort is certain to result in additional improvements which will be incorporated in the Executive order charter.

This continual process of evaluation and modification has helped Federal labor-management relations remain responsive to changing conditions. The Federal labor relations program is making the transition from growth to stability, but the evolution is not yet complete. Notwithstanding the enormous increase in employee representation -- from 180,000 in 1963 to more than 1,086,300 by 1973 -- Federal labor relations are still in the

formative stage. Stabilized patterns of labor-management relationships have not yet developed in the Federal sector to the degree necessary for either managers or employees to operate effectively within the rigid framework of a statutory system, and certainly not under a system as proposed in H.R. 10700.

Apart from this fundamental concern, H.R. 10700 contains some extremely undesirable features which have been noted in reports of the Civil Service Commission, the Department of Defense, and the Department of the Treasury, with which this Office concurs.

While H.R. 10700 is less objectionable in some respects than other proposals pending in your Committee (and indeed some of its provisions duplicate those under Executive Order No. 11491), the bill nonetheless includes certain features which are not acceptable elements of a Federal labor management program.

We are strongly opposed to the provisions of H.R. 10700 which would impose unwarranted restrictions on agency operations by establishing a Federal Labor Relations Authority and a Federal Labor Relations Board. The proposed Authority would perform functions now carried out by the Federal Labor Relations Council, the Assistant Secretary of Labor for Labor-Management Relations, and the Federal Service Impasses Panel. It would supplant these organizations, which are designed to reflect the government's paramount role in protecting the public interest in labor management relations. This would be highly undesirable. The proposed Authority would disrupt the present system at just the stage where it has evolved into useful third-party machinery.

Even more objectionable is the proposed Board, which would be required to approve, modify or reject those agency regulations, involving negotiable matters, which have Government-wide application. The Board could effectively nullify the authority of such agencies as the Civil Service Commission, Office of Management and Budget, General Services Administration, Department of Labor, and others, to determine Government-wide matters for which they are responsible under law. The Board's function would directly undermine the Civil Service Commission's role as the government's central personnel agency and guardian of the merit system. Moreover, the Board would grant unions quasi-bargaining rights on Government-wide policies. The result would be that unions could seriously obstruct the development

of government policies by protracted discussion which would assume the character of open-end negotiations.

Thus, the Board, with no responsibility for operation or implementation of government programs, would have sweeping authority to make final decisions which would determine the agency policies to be issued, revised or revoked. We believe such a provision is as unwise as it is irresponsible. It imposes unjustified and unworkable restrictions on the basic managerial authority of Federal agencies.

Accordingly, for the reasons stated, we strongly oppose these provisions of the bill. Enactment of H.R. 10700 would not be in accord with the program of the President.

Sincerely,

(signed) Wilfred H. Rommel

Wilfred H. Rommel  
Assistant Director for  
Legislative Reference

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-40342

February 4, 1974

The Honorable Thaddeus J. Dulski, Chairman  
Committee on Post Office and Civil Service  
House of Representatives

Dear Mr. Chairman:

Your letter of October 5, 1973, requested our report on H.R. 10700, 93d Congress, a bill to provide improved labor-management relations in the Federal service.

The bill would establish a statutory base for labor-management relations affecting employees of the executive branch of the Government. Currently, labor-management relations in the Federal Government is the subject of little substantive legislation although the area has been covered by a series of Executive orders. Executive Order No. 11491, October 29, 1969, as amended by Executive Order No. 11616, August 26, 1971, is now in force with respect to this subject.

Whether it is desirable at this time to establish a statutory basis for labor-management relations in the Federal Government is a matter primarily for consideration of the Congress. However, as we pointed out in our report on H.R. 13, 93d Congress, B-40342, June 22, 1973, we believe that a thorough review of the desirability of congressional action is appropriate in light of the growth of Federal employee unions, the fact that labor-management relations in the Federal Government is an evolving program, and because many provisions of controlling laws and regulations were enacted or promulgated without recognition of the potential for using the labor-management negotiation process in determining employee rights and benefits.

While we favor greater union input into the formulation of policies and regulations governing Federal employees, we have some concern that the provisions of H.R. 10700 which establish a Federal Labor Relations Board to consider certain policies and regulations before they are issued would not effectively or efficiently serve that purpose.

Under subsection 7107(g) of the bill a Federal Labor Relations Board is established to consider policies and regulations, or amendments to existing policies or regulations, proposed to be issued by the Civil Service Commission or any other agency, with the exception of the Department of Defense, relating to employees of more than one

agency. The members of the Board, designated by the Chairman of the Civil Service Commission, would include a chairman and ten others, consisting of five members from among management officials of the agencies covered under the bill and five members from labor organizations holding exclusive recognition in those agencies. The Board, in considering policies and regulations which relate to employees of more than one agency, would have the ultimate authority to adopt, modify or reject a proposed regulation. The Board would also have authority to initiate changes in existing regulations over which it is given jurisdiction. The Board's action with respect to any regulation or policy would be binding on the issuing agency. Thus, while the bill does not clearly delineate the regulations which would come within the jurisdiction of the Board, it would appear that the Federal Labor Relations Board would, in effect, have final authority with respect to the form and content of any regulation pertaining to Federal employees in general. Some of the regulations to which this authority apparently would extend include regulations concerning life and health insurance, retirement, compensation for injuries, pay and allowances, leave, travel and transportation, per diem, and mileage.

We question whether the Board as provided for in the bill would have the necessary time, personnel and expertise to enable it to adequately exercise regulatory authority over the broad range of subjects which apparently would fall within the scope of its responsibility. Also we question the proposal since, in effect, it would superimpose board authority over the individual regulatory authority of particular agencies which under existing law have statutory responsibility for administering specified programs. Removal of final regulatory authority presently vested in such agencies would preclude holding those agencies responsible for the proper administration of such laws.

In that connection we note that the method of selecting the Board, i.e., designation by the Chairman of the Civil Service Commission, does not appear to be in keeping with its broad authority. Also the latitude the Chairman of the Civil Service Commission would have with respect to the appointment of the Chairman of the Board and his tenure in office, as well as the provision that he would serve only part-time in that position would seem to be inconsistent with the duties and responsibilities of the Board.

In light of the foregoing, we believe that the provisions in H.R. 10700 concerning the Federal Labor Relations Board deserve the closest scrutiny of Congress.

Also, we have the following comment on the roles of the courts and GAO in the context of the changes that this measure would bring about. Under section 7107(i)(4) a labor organization may appeal to the Federal Labor Relations Authority for a decision in stated circumstances. As we understand this section it would not limit or restrict the jurisdiction of the General Accounting Office or the courts in construing existing laws or limit the binding effect of such construction on all executive agencies of the Government. In the absence of an express provision in the bill modifying or limiting the statutory authority presently vested in the Comptroller General and the courts, all actions by the Authority would be subject to the controlling decisions of the Comptroller General and the courts. If a different construction is intended by the Congress we suggest that such intent be expressly incorporated in the language of the bill. Our comments pertaining to this section apply as well to section 7112(b) and we suggest the addition of the words "if consistent with existing law" after the word "binding" on line 22, page 38.

With regard to other specific provisions of H.R. 10700, we have the following comments:

Section 7103(a)(7). Under this section complaints involving matters subject to appeals procedures prescribed by, or pursuant to, existing or future specific provisions of law are excluded from the definition of the term "grievance." Since under section 7112 of the bill grievances are subject to final settlement by the Federal Labor Relations Authority, we would suggest that the words "or claims cognizable by the General Accounting Office" be added at the end of section 7103(a)(7) in recognition of the statutory responsibility placed on this Office to settle all claims against the United States.

Section 7103(a)(10). The definition of the term "collective bargaining" would appear to preclude the use of authorized representatives of management officials having management responsibility for the appropriate unit. Since some of the larger agencies may wish to be represented by negotiation specialists at the bargaining table the Committee may wish to clarify the definition to provide for bargaining with authorized representatives of management officials as well as the management officials themselves.

Section 7106(g)(4). Since the authority for personnel policy matters is generally held only at the upper headquarters level within

an agency and those policies govern employees throughout the agency, the Committee may wish to consider changing the wording of subsection 7106(g)(4) to read "is consistent with the centralization or decentralization of authority to carry out agency personnel policies" in order to more clearly provide for the establishment of units on less than an agency-wide basis.

Section 7107(a). This subsection provides that a labor organization is "entitled" to represent and bargain collectively for employees in the unit. Thus it would appear that the organization is not obligated to represent the interests of all the employees in the unit. We note that this provision differs from the provisions of section 10(e) of Executive Order No. 11491 which requires a union to negotiate agreements covering all employees in the unit.

Section 7107(d). Since Executive orders may contain provisions relating to Federal employees in the same manner as laws or regulations, it would appear that collective bargaining relationships and the rights of employees established under E.R. 10700 should be governed by Executive orders when applicable as well as by laws and regulations. This could be accomplished by placing the words "or Executive Orders" at the end of section 7107(d)(1) or by creating a new subsection (2) reading "existing or future Executive Orders" and redesignating the current subsections (2) and (3) of section 7107(d) as (3) and (4) respectively.

Section 7107(e)(1). We understand that the exclusion of the Department of Defense from provisions of the bill relating to the jurisdiction of the Federal Labor Relations Board is to prevent consideration by the Federal Labor Relations Board of policies or regulations, or amendments to existing policies or regulations, issued by the Department of Defense and relating only to employees of the Department of Defense and the military departments. These policies or regulations would apparently be subject to the procedures outlined under sections 7107(e)(2), (3) and (4). However, the wording of subsection 7107(e)(1) would preclude consideration by the Federal Labor Relations Board of regulations issued by the Department of Defense which apply to employees of agencies other than the Department of Defense and the military departments. An example of such a regulation is that issued by the Department of Defense under the authority of subsection 1(o) of Executive Order No. 10621, July 1, 1955, as amended by Executive Order No. 11294, August 4, 1966, 31 Fed. Reg. 10601, to establish maximum rates of per diem allowances for civilian officers

and employees of the Government to the extent that such authority pertains to travel status in localities in Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and possessions of the United States. The Committee may wish to provide that a policy or regulation of this type issued by the Department of Defense would be subject to the same procedure as would be generally applicable to regulations promulgated by other agencies. This could be done by replacing the words "other than the Department of Defense" within the parenthesis in section 7107(e)(1) with the words "other than the Department of Defense when it regulates only for itself and/or the military departments."

Sections 7107(e)(3) and (4). These subsections provide for multi-labor organization negotiation. A question could arise as to whether the negotiations are to be conducted collectively or on an individual basis with the labor organizations involved.

Section 7107(f)(3). If it is intended not to allow labor organization representatives travel costs or per diem for participating in meetings concerning the issuance or amendment of policies or regulations, it would appear that subsection(e)(2) should be enumerated in section 7107(f)(3) along with subsections(e)(3) and (e)(4).

Section 7107(g)(1). The parenthetical in this section may be omitted as unnecessary if the description of the matters subject to negotiation in section 7107(e)(1) is changed in accordance with our comments on section 7107(e)(1), supra.

Section 7107(g)(3). Under the provisions of this subsection the choice of the members of the Federal Labor Relations Board from among management officials would be based at least in part on the number of employees in a particular agency who are under exclusive recognition. However the Board would consider regulations governing all Federal employees, regardless of whether or not they are in bargaining units. The Committee may wish to consider whether it would be preferable to base management representation on the Board on the basis of the total number of employees in an agency rather than on the basis of the total number under exclusive recognition.

Section 7107(g)(7). It would appear that the reference to subsection (d)(2) herein is not necessary and may be confusing. The provisions of subsection 7107(g)(7) are apparently directed towards policies or regulations which relate to the employees of more than one agency.



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
WASHINGTON, D. C. 20301

May 28, 1974

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post Office  
and Civil Service  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

Reference is made to your request for the views of the Department of Defense with respect to H. R. 10700, a bill "To provide for improved labor-management relations in the Federal service, and for other purposes."

The primary purpose of H. R. 10700 is to provide a statutory base for labor-management relations affecting agencies of the Executive branch of the Government and their employees. The bill would establish policies and procedures dealing with exclusive recognition of labor organizations, negotiation between agencies and labor organizations concerning personnel policies and employee working conditions, and various other aspects of Federal labor-management relationships. It would establish administrative machinery for the protection of employee and management rights and the resolution of labor-management disputes. The bill would supplant the existing Federal labor-management relations program established by Executive Order 11491, as amended.

As we pointed out in our letter of May 22, 1973, commenting on another bill dealing with Federal labor-management relations (H. R. 13), we do not believe that legislation in this area is necessary or desirable at the present time. Collective bargaining in the Federal service is still relatively young, dating primarily from the issuance of Executive Order 10988 in 1962. As experience is gained by agencies and labor organizations representing their employees, needed adjustments in program policies and procedures can best be affected through administrative action. Such adjustments were made by the President in 1969 and 1971, and the Federal Labor Relations Council is currently undertaking a major review of the program which is expected to result in further evolutionary change consistent with the public interest.

H. R. 10700 is, however, significantly less objectionable in many respects than other proposed Federal labor-management relations legislation introduced in the 93d Congress. A number of its provisions incorporate similar provisions contained in E. O. 11491, i. e., those which delineate the scope of bargainable matters; prohibit conflicts of interest and exclude supervisors and managers from bargaining units; provide for the exemption of agencies and organizational entities which perform security, intelligence or investigative functions; and specify criteria for appropriate bargaining units and procedures for resolving negotiability disputes.

In certain other respects, however, H. R. 10700 contains provisions which are in conflict with the basic elements of managerial authority which Federal managers must retain if they are to administer Federal programs in the public interest. Sections 7104 and 7105 of H. R. 10700 would significantly change the administrative structure of the Federal labor-management relations program by establishing a Federal Labor Relations Authority, which would assume functions currently being performed by the Federal Labor Relations Council, the Federal Service Impasses Panel, and the Assistant Secretary of Labor for Labor-Management Relations. We feel the present administrative machinery of the program is just now completing its initial period of policy and procedural development and is reaching a stage where it is working reasonably well. It would be disruptive to overturn at this point the body of precedents and procedures that have been so painstakingly evolved over the period since Executive Order 11491 was issued.

The Department of Defense is opposed to certain other concepts incorporated in H. R. 10700, particularly the proposed Federal Labor Relations Board, described in section 7107(g). As we understand it, the establishment of this Board would have the effect of withdrawing from the Civil Service Commission, the Department of Labor, the Office of Management and Budget, and other agencies their authority to determine policies of Government-wide application affecting Federal employees; such policies would be decided upon only by majority vote of the eleven-member Board. For practical purposes, this means that the Chairman will decide all disputed issues. The Chairman, under the statute, would not be responsible to the President, the Civil Service Commission, the Congress, the department heads appointed pursuant to law or to any other authority. We seriously question the wisdom of placing such a responsibility for Government-wide personnel management in the hands of any single individual, however well intentioned, who has no responsibility for assuring that laws are faithfully executed.

In addition, the practicality of this proposed arrangement is subject to serious question. Experience to date with the National Wage Policy Committee and its successor, the Prevailing Rate Advisory Committee established by Public Law 92-392, whose composition is similar to that proposed for the Board, leads us to believe that most Board decisions would be reached only after extended discussion and debate. In view of the wide variety of matters which would be channeled to the Board from all agencies of government, we anticipate that the Board would be in nearly continuous session and that it would prove very difficult to obtain timely and responsive resolution of vital policy issues. We are concerned, also, about the lack of protection for basic Civil Service merit system principles inherent in the proposal.

The Civil Service Commission now follows the practice of consulting with the major Federal employee unions before issuing new or revised regulations. In our opinion, this provides organizations representing substantial numbers of Federal employees with adequate opportunities to make their views known and have them carefully considered in the formulation of Government-wide policies. We do not believe that the quasi-bargaining rights on Government-wide policies which would be extended to Federal employee unions under the Board concept incorporated in the bill are reasonable or workable. The bill establishes a system under which unions could seriously obstruct the development of Government-wide policies by subjecting them to protracted discussions assuming the character of negotiations. It would place in the hands of a single individual, the Chairman, who has no responsibility for the successful execution of government programs, sweeping authority to determine what policies will be issued, revoked or changed.

We are also opposed, as impractical and undesirable, to the provisions of H. R. 10700 which would require bargaining on agency personnel policies when unions have not attained sufficient employee support to gain national exclusive recognition and the resultant right to bargain on agency regulations. These provisions, found in section 7107(e)(3) and (4), would depart radically from a basic principle observed almost universally to date in private sector and Federal labor relations by extending bargaining rights to unions even though no appropriate unit has been established and the employees affected have been given no opportunity to express themselves. In our view, the present machinery for establishing bargaining rights, with the possible addition of the fourth unit criterion proposed in the bill will be entirely adequate to ensure that bargaining will take place at appropriate organizational levels -- i. e., at whatever level a union has

obtained exclusive recognition and at any subordinate levels where the parties see fit to provide for supplementary negotiations.

The Department of Defense, with nearly 2,000 separate bargaining units, must retain the capability to establish department-wide programs where they are needed as, for example, in establishing department-wide career and placement programs. The capability to establish such policies and programs would be so seriously proscribed by sections 7107(e)(3) and (4) that the Office of the Secretary of Defense and the military departments, for practical purposes, would be unable to provide central policy coordination and direction. These sections set up a procedure for continuous negotiations on a wide variety of personnel policy matters with final authority for all such decisions resting with a series of ad hoc impasse panels.

Not only would the procedures required by sections 7107(e)(3) and (4) produce the undesirable result of paralyzing action by responsible department heads, but they establish requirements that would be extremely difficult to administer. As we interpret these sections, it would, for example, be necessary to make several calculations, calling for data not now available, to determine whether bargaining was required with regard to a particular subject: how many employees it would affect, how many of these were represented by unions holding national consultation rights, and whether these constituted a majority. Agencies would be required to bargain on some matters and consult on others, and to bargain with one or more unions while consulting with others on the same subject. It would apparently be necessary to bargain with different unions, in combination or separately, on different subjects. In some instances, presumably, it would be necessary to bargain with two unions having diametrically opposed views-- a practical impossibility. The result could well be paralysis in agency personnel management and serious interference with agencies' ability to carry out their assigned functions in a manner responsive to Governmental needs and the public interest.

We believe that the objectionable provisions of H. R. 10700 are based on groundless fears that agency authority to regulate in the personnel policy area would be exercised in a way that would reduce opportunities for negotiation on a meaningful range of subjects. In our opinion, such fears are not based on fact. An assessment of the labor relations climate at Federal activities furnished to agency personnel directors by the Civil Service Commission in July 1973, for example, based on a survey of

99 representative activities, concluded that agency regulations did not have as inhibiting effect on local negotiations as might have been suspected. It should also be noted that the Civil Service Commission and the various agencies, including this Department, are currently engaged in a major effort to identify and eliminate regulatory requirements that unnecessarily restrict the scope of bargaining. We do not believe the unworkable procedures specified in sections 7107(e)(3) and (4) offer reasonable or practical approaches in light of this policy.

H. R. 10700 contains a number of provisions--sections 7113(a) and 7113(c), concerning official time; sections 7112(a)(3) and 7112(a)(4) concerning arbitration; and section 7108(a), relating to dues checkoff--which are matters which, in our opinion, could and should be left for bilateral determination by the parties; it seems inconsistent to prescribe such matters by law or regulation while at the same time seeking ways to broaden the scope of negotiations.

Sections 7109(a)(6) and (b)(6) would make failure to cooperate in impasse procedures or decisions an unfair labor practice, while sections 7109(a)(7) and (b)(8) treat similarly failure to comply with the proposed Act. Treatment of such matters as unfair labor practices could be counterproductive by requiring unnecessary adversary proceedings and providing a possible harassment device. Section 7111(b) by requiring establishment of a three-person ad hoc panel to consider each negotiation impasse, lacks sufficient flexibility of approach in dealing with impasses. It would tend to induce premature referral of impasses to the Authority. Finally, we note that the bill fails to assign necessary functions to the Civil Service Commission similar to those set forth in section 25(a) of Executive Order 11491, as amended, particularly in regard to the furnishing of policy guidance and technical advice and information to the various executive branch agencies and the training of agency management personnel in labor-management relations.

The Office of Management and Budget advises that, there is no objection to the submission of this report for the consideration of your Committee, and that enactment of H. R. 10700 would not be in accord with the program of the President.

Sincerely,

  
Martin R. Hoffmann

THE GENERAL COUNSEL OF THE TREASURY  
WASHINGTON, D.C. 20220

MAY 20 1974

Dear Mr. Chairman:

Reference is made to your request for the views of this Department on H.R. 10700, "To provide for improved labor-management relations in the Federal service, and for other purposes."

The proposed legislation would amend title 5, U.S. Code, to establish a framework for the conduct of collective bargaining between the labor organizations representing Federal employees and their employing agencies. It would replace the existing Federal labor-management program created by Executive Order 11491, as amended.

The Department is opposed to the enactment of legislation establishing procedures for conducting labor-management negotiations in the Federal service since it would result in the loss of the flexibility needed to deal with the fluid and evolutionary nature of public sector labor-management relations. Accordingly, we are opposed to the enactment of H.R. 10700.

The following are our comments on some provisions of the bill.

New section 7103 of title 5, U.S. Code, contains definitions. Subsection (a)(3) would exclude certain named agencies as well as any office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the President determines that the provisions of the bill cannot be applied with respect to that office, bureau, or entity in a manner consistent with national security requirements. Subsection (a)(2)(vi) would exclude an employee regularly assigned to work in locations where intelligence, investigative, or security work is performed, when the President determines that the provisions of the bill cannot be applied with respect to that employee in a manner consistent with national security requirements and considerations. This latter subsection would appear to be unnecessary in view of the former subsection. Furthermore, it would be impractical to require the President personally to make exclusions of individual employees. If it is necessary to exclude specific employees in addition to organizational entities, we believe the authority to make the determination should rest with the agency head.

In addition, we believe that the U.S. Secret Service should be specifically excluded from the provisions of the bill since its functions are similar to those of the F.B.I., which is excluded by

name. We question whether the General Accounting Office should be excluded from the provisions of the bill. The bill fails to make clear whether the President's determinations under section 7103 are specifically excepted from any review. Such review could cause an exposure of crucial security information.

New section 7103(a)(13) defines the term professional employee. It is clear that attorneys would be included within the definition. New section 7106(h)(6) would provide that a labor union "unit" may include both professional and nonprofessional employees, if a majority of the professional employees vote for inclusion in the unit. The Department is opposed to units of employees which include both attorneys and others. This objection is based on the proposition that attorneys who become members of a unit or a union may be in violation of the ethical standards of the American Bar Association and certain State bar associations.

New section 7104 would establish a Federal Labor Relations Authority comprised of a Chairman and two additional members. Subsection (e) would provide that "a vacancy in the Authority shall not impair the right of the remaining members to exercise all the powers of the Authority." We question whether this provision would be workable since there would be only two members available to make determinations and this could result in a tie vote on a given issue.

New section 7106 relates to exclusive recognition of labor organizations. We believe that exclusive recognition should be granted only after a secret ballot election except for situations provided for in section 7106(f)(1), where a free and untrammelled election cannot be established. An election greatly reduces chances for coercion of employees and its results are the best evidence to both management and unions of the employees' desires.

New section 7107 would establish a Federal Labor Relations Board, whose members would be a Chairman, and five management officials of Federal agencies covered by the bill and five members from labor organizations holding exclusive recognition under the bill chosen by the Chairman, Civil Service Commission.

The Board would be authorized to consider policies and regulations involving matters subject to negotiation proposed by the Civil Service Commission or any other agency other than the Department of Defense. We are opposed to this provision because (1) it appears to subordinate the Civil Service Commission to the Board and could seriously damage the Commission as the Government's central personnel agency and protector of merit promotions; (2) it would make open-end negotiations possible; (3) it would require other agencies having Presidentially-delegated responsibilities for issuing Government-wide regulations to submit their proposed regulations to the Board with Civil Service Commission appointees controlling the Board on such matters; (4) it could result in serious delays in issuance of regulations; and (5) four union members of the Board could propose agency regulations which could be acted upon by the Board without sufficient input or study by the agencies which would have to implement them.

Furthermore, subsection (e)(3) of new section 7107 apparently would permit unions to consolidate on an ad hoc basis for negotiations with a Federal agency. As a result, these unions could combine to negotiate on different issues and small unions holding "swing votes" would achieve inordinate power under such arrangement.

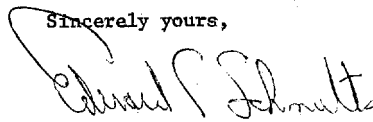
Subsection (g)(2) which sets forth the membership of the Board is ambiguous. It is not clear from a reading of the subsection whether the Chairman of the Board is the Chairman of the Civil Service Commission, or an individual designated by the Chairman of the Civil Service Commission. If the latter is the case, there is nothing to indicate the criteria for selecting the Chairman and nothing relating to tenure and pay of the Chairman.

Subsection (g)(6) of new section 7107 would provide that the Board may adopt, reject, or modify any proposal before it by majority vote. It is not clear from the language of the subsection whether all eleven members of the Board must meet in order to take a vote on a proposal. If this is the case, it would seem to create administrative problems since it is difficult to arrange for a convenient meeting date for eleven participants. If it is intended that the Board may act without the presence of all its members, then the subsection should be amended to include a requirement for a quorum.

New section 7113 would provide that employees representing a labor organization in negotiations be given official time for such purposes during regular hours. The section fails to specifically prohibit the payment of travel and per diem for such negotiators. The decision to select negotiators from locations away from the negotiating site is the union's and it should bear the cost.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee, and that enactment of H.R. 10700 would not be in accord with the program of the President.

Sincerely yours,



General Counsel

The Honorable  
Thaddeus J. Dulski, Chairman  
Committee on Post Office  
and Civil Service  
House of Representatives  
Washington, D.C. 20515



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

May 23, 1974

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post Office and Civil Service  
House of Representatives

Dear Mr. Chairman:

This is in reply to your request of January 3, 1974, for a report on H.R. 10700, a bill "To provide for improved labor-management relations in the Federal service, and for other purposes".

This Department recommends that the bill not be passed.

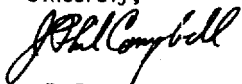
The bill provides for participation of employees of the Executive branch, through labor organizations of their own choosing, in the formulation and implementation of personnel policies and practices and matters affecting working conditions, and collective bargaining rights for labor organizations representing employees.

Executive Order 11491, as amended, is doing an adequate job to meet the needs of the employees and management and yet allow agencies to meet the requirements of good public service. Hence, we believe legislation is not required at this time.

We are opposed specifically to the provisions of H. R. 10700 which would establish a Federal Labor Relations Board with authority to approve, modify or reject agency regulations and other issuances.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of H.R. 10700 would not be in accord with the program of the President.

Sincerely,



J. Phil Campbell  
Acting Secretary



NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

May 29, 1974

Honorable Thaddeus J. Dulski  
House of Representatives  
Washington, D.C. 20515

Dear Congressman Dulski:

This is in response to your request of May 9, 1974, for a report from this Agency on H.R. 10700, "To Provide for Improved Labor-Management Relations in the Federal Service, and for Other Purposes."

An examination of H.R. 10700 discloses that it proposes a fundamental change in labor management relations for Federal employees and that it would displace the present labor-management system now operating under Executive Order 11491. Because of its impact on Federal employees generally, we believe it would be appropriate to defer to the views of the Civil Service Commission which is in a better position to evaluate such proposal and its effect. Consequently, we will not submit any specific views on such bill at this time.

It is our belief, however, that it would be somewhat premature to displace the existing labor-management program at a time it is undergoing a period of evolutionary development and before such programs have an opportunity to reach full maturity.

In that regard, I would note, that our Agency has had a satisfactory experience with our present labor-management program under Executive Order 11491. For your information, I am enclosing a copy of comments submitted by the Agency to the Federal Labor Relations Council in response to the Council's request concerning its recent general review of the labor management relations program in the Federal sector.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 10700 would not be in accord with the program of the President.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. B. Miller".

Edward B. Miller  
Chairman

FEDERAL POWER COMMISSION  
WASHINGTON, D.C. 20426

H.R. 10700 - 93d Congress

MAY 21 1974

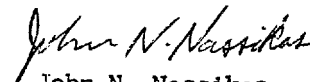
Honorable Thaddeus J. Dulski  
Chairman  
Committee on Post Office and Civil Service  
House of Representatives  
207 Cannon House Office Building  
Washington, D. C. 20515

Dear Mr. Chairman:

Submitted herewith in response to your request of January 3, 1974, and further letter of May 9 are three copies of the report of the Federal Power Commission on H.R. 10700, a bill "To provide for improved labor-management relations in the Federal service, and for other purposes."

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of H.R. 10700 would not be in accord with the program of the President.

Sincerely,

  
John N. Nassikas  
Chairman

Enclosure:

Report on H.R. 10700  
in triplicate.

FEDERAL POWER COMMISSION  
REPORT ON H.R. 10700 - 93D CONGRESS

A BILL "To provide for improved labor-management relations in the Federal service, and for other purposes."

H.R. 10700 proposes additions to chapter 71 of Title 5 of the United States Code providing for the creation of a Federal Labor Relations Authority to govern labor-management relations within the Federal service. The Authority would have three members appointed by the President subject to Senate confirmation (Sec. 7104), and would be authorized to grant exclusive recognition to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election held in conformity with the requirements of the proposal (Sec. 7106).

The characteristics of an appropriate unit would be determined by the Authority in each case to ensure employees the fullest freedom in exercising the rights guaranteed by the proposed legislation. Such unit may be agency-wide or limited to plant, installation, function or determined on some other basis. The Authority's guidelines in this respect are (1) to ensure a clear and identifiable community interest among the employees, (2) to promote effective labor-management dealings, (3) to permit efficient agency operations, and (4) to provide consistency with the centralization or decentralization of authority for personnel policy matters within the agency.

The stated Congressional policy (Sec. 7101) is that participation of employees of the Executive branch, through labor organizations of their own choosing, in the formation and implementation of personnel policies and practices and matters affecting working conditions is in the public interest, and that collective bargaining rights which are consistent with the public service and the efficient administration of Executive agencies shall be enjoyed by labor organizations representing employees.

Application for exclusive recognition would be made to the Authority by petition of any person alleging that 30 percent of the employees of such unit wish to be represented for collective bargaining by an exclusive representative or that the exclusive representative was no longer the representatives of the majority of employees in such unit. The Authority if it finds after investigation that there is reasonable cause to believe that a question of representation exists would provide for hearing upon notice and pursuant thereto and subject to rules to be established may hold an election and certify a labor organization which receives the majority of votes therein as the unit's exclusive representative.

Provision is also made for certification upon petition of a labor organization where the Authority is satisfied that the organization represents a majority of employees in an appropriate unit, has lawfully reached such majority status, and that no other person has filed for recognition.

H.R. 10700 appears to be intended to create a comprehensive bill of rights for Federal employee labor organizations and spells out in specific detail rights of employees and rights and duties of labor organizations and agencies in labor-management relations. In the latter connection, it would provide for the establishment of a Federal Labor Relations Board to consider policies and regulations (or amendments thereto) involving matters subject to negotiation between the representative organizations and Federal agencies encompassing personnel policies and practices and matters affecting working conditions proposed to be adopted by the Civil Service Commission, or other agencies. (Sec. 7107.)

Among other provisions, proposed Section 7109 enumerates actions constituting unfair labor practices on the part of both Federal agencies and labor organizations; Section 7110 would vest power in the Authority to prevent unfair labor practices; and Section 7111 would empower the Federal Mediation and Conciliation Service, upon request, to assist in the resolution of negotiation impasses.

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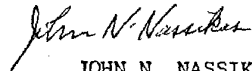
While this bill codifies many of the provisions contained in existing Executive Orders Nos. 11491, 11616, and 11636, issued respectively on October 29, 1969, August 26, 1971, and December 17, 1971, many of its other provisions would in our view effect significant changes in the relationship which now prevails between Federal agencies and their employees.

H.R. 10700 would by definition (with certain stated exceptions) be applicable only to Executive agencies. There is therefore a question whether the bill includes independent regulatory agencies, since they are in statutory form arms of the Congress rather than of the Executive.

In summary we have no objection to enactment of the bill.

The Office of Management and Budget advises that there is no objection to submission of this report and that enactment of H.R. 10700 would not be in accord with the program of the President.

FEDERAL POWER COMMISSION



JOHN N. NASSIKAS  
CHAIRMAN

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20534

JULY 8, 1974

Honorable Thaddeus J. Dulski  
Chairman  
Committee on Post Office and  
Civil Service  
House of Representatives  
Suite 207  
Washington, D.C. 20515

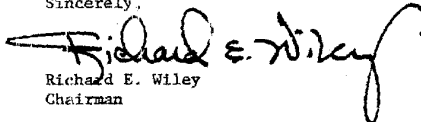
Dear Mr. Chairman:

The Commission appreciates the opportunity to comment on H.R. 10700, which proposes legislation for labor-management relations in the Federal service.

The Commission has no exhaustive comments to make concerning H.R. 10700; however, we would like to take this opportunity to point out that we believe the Federal labor relations program has worked well under the Executive Order format and that legislation is not needed at this time. We are essentially in agreement with the testimony made by Chairman Hampton before the Committee on May 21, 1974.

Again, thank you for soliciting our views on this matter. If you have need for additional information, please do not hesitate to contact me.

Sincerely,

  
Richard E. Wiley  
Chairman

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post  
Office and Civil Service  
House of Representatives  
Washington, D.C. 20515

MAY 29 1973

Dear Mr. Chairman:

This is in response to the Committee's request for the views of this office on H.R. 13, "To provide for improved labor-management relations in the Federal Service, and for other purposes."

H.R. 13 would establish by statute a system, administered by a three-member Federal Labor Relations Authority, to govern the conduct of Federal sector labor-management relations. The bill would promulgate a statement of Congressional policy with respect to employee rights and employer responsibilities. It would provide administrative procedures patterned loosely upon the National Labor Relations Act, and it would provide special machinery for resolving disputes arising from the collective bargaining process. It would entirely displace the existing system of Federal labor-management relations.

Today, labor-management relations in the Federal service is governed by executive order. The merit of this system is its responsiveness to the dynamics of a developing institution. This characteristic responsiveness is best illustrated by the history of the Federal program, in which Executive Order No. 10988 of January 1962 is the first landmark for Federal employees. While this order assigned ultimate program authority to the heads of executive departments and agencies, it also provided conditions favorable to union organizing efforts among Federal employees. In 1963, unions represented 180,000 Federal employees. By 1969, the number had grown to 843,000. The number as of November, 1972 was 1,083,000.

Following the period 1963-1969, in which union representation increased more than fourfold, Executive Order No. 11491 of October 1969 moved the Federal program closer to the prevailing private sector concept of labor-management relations by providing third party machinery for program administration and policy guidance. It also took into account the unique



character of public service by establishing a procedure for resolving bargaining disputes in lieu of strikes by Federal employees. At the same time, Executive Order 11491 clearly recognized the government's obligation to serve the public by reserving for management those rights which are essential to carrying out the missions of the Federal agencies.

Under Executive Order 11491, the Federal Labor Relations Council has a mandate to report on the program periodically and to recommend needed modifications to the President. Two further executive orders have been issued in implementation of this review process. The first, Executive Order No. 11616 of August 1971, amended Executive Order 11491 to expand the permissible areas of negotiation and to refine the applicability of grievance procedures. The second, Executive Order No. 11636 of December 1971, recast the employee-management relations system in the foreign affairs agencies to take account of the unique conditions of work in the Foreign Service.

This process of modification has helped Federal labor-management relations remain responsive to changing program conditions. The Federal labor relations program is making the transition from growth to stability, but the evolution is not yet complete. While 55% of eligible Federal employees are now represented by labor organizations, negotiated agreements have been concluded in only half of the bargaining units where unions represent Federal employees. At this stage, therefore, stabilized patterns of labor-management relationships have not yet developed in the Federal sector to the degree necessary for either managers or employees to operate effectively within the rigid framework of a statutory system. A statutory system would be premature and unresponsive to the present environment of expansion and development which pertains in the Federal program.

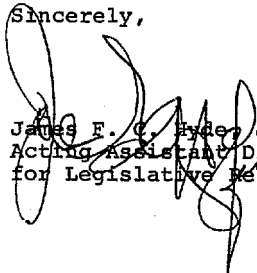
Independent of the foregoing fundamental concern, H.R. 13 has many extremely undesirable features, as noted in the reports of other agencies of the executive branch, from which the committee has requested views, and in the attached analysis of the objections to H.R. 13. H.R. 13 is objectionable first because it fails to comport with certain fundamental labor relations concepts which apply equally to the Federal and private sectors. Second, it is objectionable for its failure to consider the equal interests of both labor and management in the collective bargaining relationship. Third, H.R. 13 leaves in confusion the conceptual basis upon which statutory labor-management relations should develop in the Federal sector. Finally, it places severe limitations on the capacity of Federal agency managers to act in the public interest.

H.R. 13 contains several other deficiencies. By applying, with the notable exception of the U.S. Postal Service, to independent government corporations such as the Tennessee Valley Authority, and to employees subject to the Foreign Service Act of 1946, it discounts the unique conditions of employment and the long-established, effective relationships which have justified separate consideration for each of these entities under the present system of Federal labor-management relations. These separate provisions, by recognizing basic distinctions within the Federal workforce, help maintain the efficiency of government operations.

Furthermore, the Federal government has found it to be in the public interest to honor the employment regulations of host countries where the government employs foreign nationals. It is essential that this consideration be preserved. Finally, under the existing Federal labor relations program, several entire agencies, and certain organizations within other departments, have been excluded from coverage on the grounds of their functional relationship to intelligence, investigative or security activities in the national interest, or in the interest of internal security within an agency. We believe it would be highly undesirable to include such agencies in a statutory labor relations system as is contemplated by H.R. 13.

Accordingly, for the reasons stated, we strongly recommend that no statutory system of labor-management relations be enacted for the Federal sector at this time. Enactment of H.R. 13 would not be in accord with the program of the President.

Sincerely,

  
James F. G. Hyder Jr.  
Acting Assistant Director  
for Legislative Reference

Attachment

Attachment

Analysis of H.R. 13

The proposals of H.R. 13 cover a broad spectrum of undesirable features. To cite a narrow technical deficiency, in the election procedure (Sec. 501(f)), where no choice on the ballot receives a majority of the votes in a three-way contest, "a runoff election shall be conducted between the two labor organizations receiving the largest number of votes." Even if the "no union" or "neither" choice polls more than any labor organization on the ballot, that option, not a union, would be dropped from the runoff. Such procedural bias is wholly unwarranted.

Another deficiency with rather more significant implications is the conspicuous absence in H.R. 13 of an express prohibition of strikes or picketing by Federal employees against the Federal government. Under H.R. 13, it appears that such activities would be deemed merely derivative violations from a failure or refusal to comply with the impasse resolution provisions. This approach is an inadequate deterrent without the accompanying requirement that government operations be maintained unimpaired at all times, and without effective sanctions to enforce that requirement. H.R. 13 offers neither.

H.R. 13 has other, more fundamental deficiencies as a proposal for governing Federal labor-management relations. Far from achieving the policy objective stated in the first section of H.R. 13, the overall effect of this bill would be to reduce the efficiency and thereby the effectiveness of the conduct of public business. This would result from the bill's elements of individual disincentives, conflicts of interest, lack of managerial prerogatives, limited consideration of legitimate management interests, unstable bargaining structure and technical deficiencies which, in our view, would interfere with the objective of efficient government operations.

Examples from the following topical areas illustrate these deficiencies:

1. Individual Rights. The National Labor Relations Act (NLRA) expressly guarantees each employee the right to form, join or assist a labor organization, and the right to refrain from any or all such activity. H.R. 13 offers no such freedom to refrain. This ominous omission would deny a worker the right to decide not to affiliate with any organization, simply because he is in a Federal employee bargaining unit; he could be required to pay dues to a union he does not support in order to keep his government job.

Further, nowhere in the NLRA are the actions of an individual subject to such potential jeopardy as they are under H.R. 13. The bill contains an unfair labor practice clause which provides that an individual, by his actions in behalf of labor or management, may be found personally to have committed an unfair labor practice. The bill also empowers the proposed Federal Labor Relations Authority (FLRA) to order the agency to demote, suspend or remove any supervisor or official for acting in violation of the bill. The potential for intimidation and the disincentive to managerial initiative in the face of this threat cannot be overstated. In the Federal sector, discipline has been a management prerogative, subject to the right of due process. Under H.R. 13, discipline, and the discretion not to discipline, would be legislated away from management and the constitutional rights of due process would be denied to supervisors and officials of the agency. Moreover, it should be emphasized that these provisions--personal liability for unfair labor practices, and outside disciplinary authority--far exceed the existing standards of redress for violations of the NLRA.

2. Management Rights. In the private sector, the negotiability of management rights and working conditions has been determined not by statute, but instead, by a detailed body of case precedent. H.R. 13 in effect codifies these precedents where they apply to negotiable "conditions of employment" but ignores them where they define the nonnegotiable rights of management. In fact, neither type of precedent is appropriate for the Federal sector. In particular, adopting private sector negotiability precedents would so broaden the areas of union involvement, and so restrict the areas of discretion for Federal managers that the ability to guide an agency in the performance of its mission would be dangerously undermined. Executive Order 11491 has defined the areas where managers must retain the right to manage. However, not only does H.R. 13 lack any definition of management rights, it instead mandates three normally negotiable matters (union security, official time, and dues checkoff service) to labor as a matter of right. This approach, the obverse of providing for management rights, effectively denies management any discretion whatever in responding to these traditional objectives of union negotiators.

Furthermore, in a legislative proposal that contemplates free-rein application of collective bargaining to the Federal sector, it is inconsistent to limit management's right of free speech more severely than it is curtailed in the private sector. The Federal sector management neutrality doctrine exists as a derivative requirement of labor-management relations under executive order, where Presidential policy has been to facilitate, not to oppose, union organization. As a matter of consistency, Federal managers were constrained by that objective to

a policy of neutrality toward union organizing efforts. (They, of course, are not prohibited from presenting management's case on unit, election, negotiation and unfair labor practice issues.) In a statutory environment this limitation, and the lack of management prerogatives would be severely detrimental to the managerial effectiveness of the Federal government.

3. Appropriate Bargaining Units. Both labor and management share an interest in the criteria used to determine appropriate bargaining units. H.R. 13 offers only the community of interest criterion which, standing alone, presents but one side of the issue. Two additional standards have been developed in the Federal labor relations program. The first, efficiency of agency operations, takes account of management's concern for the administrative burden of the unit structure with which it is confronted. The second, effectiveness of dealings, is a neutral standard designed to insure that the unit which is fashioned matches the actual level of decision-making authority in the organization. A mismatch in either direction can frustrate the objective of representative participation in determining the conditions of Federal employment. These two additional criteria, which are absent in H.R. 13, take account of the obligations of the Federal sector to maintain the efficiency of government operations, as a matter of public trust, and to provide an effective system of labor-management relations as a matter of public policy.

As a related matter, H.R. 13 would reduce the significance of an appropriate unit determination by giving each locally recognized union access to national consultation rights. This would extend the influence of each local union in an agency far beyond its status as exclusive representative of Federal employees at the activity level. It should also be noted that this provision, by requiring written responses to each union's comments, would present an intolerable burden of coordination and clearance for management whenever it might propose a change in agency-wide personnel policy.

4. Management Officials, Supervisors and Guards. In its definition of a supervisor, the NLRA makes careful provision for avoiding the conflict of interest created by misalignment of union representation privileges with supervisory responsibilities. This insures that supervisors are not inadvertently made a part of an appropriate bargaining unit; it thereby avoids circumstances which could be construed as management interference or domination of an employee organization. By contrast, the definitions of supervisor and management official in H.R. 13 would exclude only a very few, of the many persons who perform conventional supervisory or managerial functions, from appropriate bargaining units or from union representation.

This is a troublesome feature for several reasons. It would create inverted working relationships, wherein supervisors who are excluded from the unit report to management officials who are considered a part of the unit by these definitions. It replaces a functional definition of supervisory and managerial roles with artificial thresholds of income level, span of control and scope of personal influence as the criteria for exclusion. It also creates the anomalous possibility that a union processing an unfair labor practice case against management would be complaining of an act committed by a supervisor or manager who is part of the union's constituency. Similar inconsistencies could arise where a union processes grievances through management officials or supervisors who are part of the unit. These kinds of anomalies are tolerable in working conditions where employees are moved freely into and out of supervisory and managerial assignments, but they should not be enacted as a general feature of Federal labor-management relations.

A similar conflict of interest can arise when guards are included in bargaining units with other agency employees. This conflict, too, was recognized, and avoided, in the NLRA by permitting guards to be represented only by independent labor organizations. H.R. 13 would nevertheless permit guards to be represented with other employees, in spite of the established custom of severing units of guards to avoid conflicts of interest.

5. Certification/Recognition Procedures. The NLRA recognizes that management, too, has a stake in the process by which a union obtains exclusive representation status. The purpose of a secret ballot election is to assure both parties that the employees in an appropriate unit, voting in an atmosphere free of coercive potential, have expressed a preference for a particular labor organization to be their exclusive representative. The NLRA permits certification of majority representation status without an election if the union can offer a satisfactory demonstration of majority support. It permits management to accept this demonstration and voluntarily recognize the union. It also permits management to petition for a representation election despite this demonstration, as its alternative to voluntary recognition. Management's right to challenge insures that both management and employee interests are properly protected. This right is absent from H.R. 13. Instead, under one of the bill's most defective and uneven provisions, the FLRA would be authorized to certify a union as the exclusive representative of unit employees without an election and under criteria which make the union the sole party at interest in the proceeding.

H.R. 13 would also permit a union seeking exclusive recognition at the national level to waive any labor contract it had negotiated at any local activity (and there are currently about 1800 such contracts in effect) after it obtains department-wide recognition. If the union's claim fails, it still would not lose its local exclusive status. The union, thus, risks nothing, and has everything to gain, in this respect under H.R. 13. This procedure essentially would place the union's organizing objectives ahead of the authority of the FLRA to decide the proper organizational levels at which Federal collective bargaining should occur. It would remove the significance of local exclusive representation. It would undermine the principle of the bilateral labor contract, and it would destroy the good faith relationship upon which the concept of collective bargaining is based.

**6. Collective Bargaining Structure.** An appropriate structure of collective bargaining is the result of a series of judgments as to the conditions under which employer and employee representatives should meet to solve mutual problems, resolve differences, and conclude a joint written agreement. The component judgments involve matters which have been discussed earlier in this analysis--criteria and procedures for establishing appropriate bargaining units, categories of employees who should be excluded from such units, and criteria for determining the subjects which may or may not be taken up at the bargaining table. As that earlier analysis suggests, the proposals of H.R. 13 in these areas would establish an unwarranted bias against the legitimate interests of Federal agency management.

The H.R. 13 proposals in these areas would also produce an irrational structure of Federal collective bargaining, simply because H.R. 13 lacks a satisfactory statement of who is the Federal employer. Without defining that entity, it is impossible to create a bargaining structure that matches the union's representation authority with the employer's authority over personnel policy and practice. For example, the Federal employer may arguably be considered as the local activity where the employee was hired, and where the conditions under which he actually works are, in fact, determined. However, it would contradict the public policy of equal pay for equal work to allow Federal managers at the local level to negotiate with employee representatives over the range of issues covered by the H.R. 13 conditions-of-employment definition. Indeed, negotiations on pay and fringe benefits in any unit which is less than government-wide in coverage would result in unequal treatment by the standard of equal pay for equal work. Even national exclusive recognition would not provide sufficiently broad representation coverage.

At the other extreme, if the Federal employer is considered to be the undifferentiated Federal government, then many questions remain as to both the propriety and the effectiveness of Federal employee representation by a single union or group of unions. On the one hand, representation by a single labor union would place opportunities for strongly influencing the political decision-making process in the hands of a private organization or group with no direct political accountability to the public. On the other hand, the many different Federal occupations and the variety of Federal working conditions all deserve separate consideration of a sort which a single Federal employee representative could not offer.

As an alternative then, collective bargaining could be structured along occupational lines, but H.R. 13 does not appear to be drafted with this result in mind. Representation units along occupational lines would require abandonment of the existing structure along agency organization lines. Appropriate units would have to be predetermined by statute, and an extended transition period would be required to reorganize existing representation claims. H.R. 13 does not approach this degree of predetermination.

Caught in the middle of these unresolved structural issues is the ability of management to maintain coordinated, efficient systems of pay, benefits and personnel administration in the Federal sector. Efficiency in the Federal government is an objective which agency managers, in the public interest, are charged to maintain in carrying out the missions of their agencies. If management were denied the authority to fulfill this objective, the impact on public service in the public interest would be intolerable.



UNITED STATES CIVIL SERVICE COMMISSION  
WASHINGTON, D. C. 20415

May 23, 1973

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post  
Office and Civil Service  
U.S. House of Representatives  
207 Cannon House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the Commission's views on H.R. 13, a bill "To provide for improved labor-management relations in the Federal Service, and for other purposes."

The Commission recommends against enactment of this bill for the reasons stated below.

This bill proposes the establishment of a statutory framework for labor-management relations in the Federal service to replace the existing system originally provided under Executive Order 10988 and continued by Executive Order 11491, as amended. This bill conflicts with the general public interest and with the unique characteristics of public employment. We believe that this bill is untimely, unsound and costly and that it would be disruptive to an existing, orderly labor-management relationship.

The present labor-management relations system has been sound and of benefit to both the effective and efficient administration of Government operations and the well-being of Federal employees. The existence of third-party machinery for the resolution of union-management disputes has facilitated the orderly and constructive relationships between unions and agency management. The system serves to identify and resolve employee problems, and through consultation and negotiation to achieve appropriate union-management understandings that have accommodated employee needs and improved the operation of Federal agencies.

In the dynamic atmosphere of labor-management relations, the fact that the present system is based upon administrative direction has permitted the making of necessary, periodic adjustments to problems evidenced through program experience.

The program is still young, still very much evolving--moving forward in a balanced, constructive manner, responsive to the special requirements of the Federal service and the public interest. To place this program into a statutory framework would be to restrain the program's demonstrated

capacity to grow, to change and to adapt. The program as presently constituted represents an effective synthesis of labor relations and personnel management. Both are essential aspects of one another, and work best when, as now, they are integrated into an overall effort that recognizes both the value of employee representation and the need for efficient conduct of the public's business.

To facilitate analysis of the bill, our comments are arranged by topic areas: coverage, administration, representation, entitlements, negotiation, unfair labor practices, standards of conduct, superstructure, and costs. Also to accommodate review, in most instances the relevant sections of the bill are cited.

#### Coverage

The broad-brush coverage of H.R. 13 fails to provide for the special problems and separate circumstances applicable to supervisors and managers, to security agency employees, and to those in the Legislative and Judicial Branches. H.R. 13 applies to all Federal Departments and agencies, excluding only the Postal Service /Sec. 201(b) and (c)/. For example, it would apply to the Federal Bureau of Investigation, the Central Intelligence Agency, and other agencies, offices and bureaus which have as a primary function intelligence, investigative or security work. Any office, bureau or entity of an agency which has as a primary function investigation or audit of the conduct of work of officials or employees of the agency for the purpose of insuring honesty and integrity in the discharge of their official duties would be covered as well.

It would also revoke the authority of agency heads to exclude installations outside the United States. It would cover foreign nationals, the uniformed services in the Department of Health, Education and Welfare (the Public Health Service), Commerce (NOAA), and Department of Transportation (USCG), and independent Government corporations. Additionally, the definition provided for "dispute" /Sec. 201(g)/ would permit labor organization involvement in contractual relationships between the Government and private contractors, as well as matters pertaining to pre-employment of Federal employees. This goes well beyond the employer-employee relationship, and is so ambiguous as to be confusing. Without important necessary exclusions from coverage, this bill strongly conflicts with national security and public interests, extending to the violation of U.S. agreements with host countries by covering foreign nationals.

The bill ignores conflict-of-interest problems in several ways. For example, it would authorize the representation of management officials and supervisors side-by-side with rank-and-file employees /Sec. 201(j) and (k)/. The definition for supervisor is so worded as to include persons who would be brought into potential conflict-of-interest situations. Likewise, the definition for management official is unclear and confusing.

Presumably, there never would be a conflict of interest between employer and employee, and no one would really meet the definition for management official. This would mean that for the purposes of collective bargaining, members of an acknowledged supervisory-management body could be included in units with employees for whose conduct they are responsible. A labor organization involved in negotiation with management, or in the processing of an unfair labor practice or grievance against management, would be dealing with management representatives who are part of the labor organization's constituency. The bill would cause the Federal labor-management relations program to revert to private sector practices which were corrected in 1947. Where State and local governments are moving to exclude and/or separately treat supervisors and management officials, this bill would move in an opposite direction. The potential conflicts of interest created by the bill would not be in the public interest.

This fault of the bill also extends to the management of labor organizations. The bill fails to limit supervisors and managers from being involved in the management of labor organizations. Thus, managers, supervisors and others with potential or apparent conflicts of interest could assume leadership roles in labor organizations to the detriment of sound management practices, and good labor relations; all of which is contrary to the public interest.

In addition, certain employee organizations which are recognized as exclusive representatives of employees under the present Order could be excluded from coverage of H.R. 13 because of the definition of "labor organizations" in Section 201(d). It states, "labor organization means any national or international union, federation, council, or department, or any affiliate thereof..." Thus, some 14 local, independent labor organizations now representing about 5,700 employees could be excluded from coverage. Additional organizations which act as exclusive bargaining agents for employees could be deprived of continued recognition for failing to satisfy the requirement that they exist for the "primary purpose" of dealing with agencies concerning aspects of employment.

#### Administration

To administer the Act, there would be established a powerful and centralized Federal Labor Relations Authority (Sec. 301), virtually independent, and supplanting the key existing third parties within the Executive Order program. With greater authority concentrated in fewer hands, and with the extreme scope of bargaining (referred to below), the three appointees would be making decisions which would impact on budget and public policy--including such matters as pay, job classification and merit principles, authority which is presently exercised or specifically delegated by the Congress. This would constitute an unwarranted major revision in the entire civil service Federal personnel system.

Section 401(d) would require that the Authority undertake to grant review of a case within 30 days or lose jurisdiction of the case. While the attempt to speed case-handling is laudable, experience with labor relations in the private sector as well as the Federal program confirms that such time limits are unrealistic. These procedures would result in the decision being issued without the Authority having an opportunity to consider the case.

Section 403(b) provides that the Authority may enforce its orders in court against another Federal agency, a highly questionable procedure that would be untenable in the orderly conduct of the government's business.

Also confusing is the wording in Section 403(c), which provides that the Authority may establish or utilize "local" agencies.

#### Representation

The election procedure contained in the bill /Sec. 501(f)/ is faulty, too. In a run-off election between two labor organizations on the ballot, a "no-union" choice would be eliminated. This removes the right of employees to reject labor organizations, despite the fact that the "no-union" choice may have received a plurality, with two labor organizations each receiving less than the "no-union" choice. This procedure is extremely biased and is contrary to virtually all existing labor relations laws.

Furthermore, the certification of an exclusive bargaining agent is provided for without an election /Sec. 501(b) (2)/. The NLRB has been restricted in such procedures, by the U.S. Supreme Court, to those cases where unfair labor practices prevent free elections, and unfair labor practices were designed to frustrate the purposes of the Act. In spite of this, the Authority could determine certification without an election--even in the absence of unfair labor practices, exercising its discretion without guidelines in the Act. This would permit certification of labor organizations without regard to the desires of the employees freely expressed at the ballot box.

Section 501(d) specifies a "community of interest" as the single basis for establishing an appropriate bargaining unit. This would permit the smallest unit to be certified, thus creating proliferation of fragmented units. Management and the public also have an interest in the impact of unit structure. The bill ignores (1) the effectiveness of dealings - the alignment of the unit with the level of delegated authority over agency personnel policies and practices, and (2) the efficiency of agency operations - an essential part of Government responsibility to the public. These additional criteria under the existing program by Executive Order serve to avoid excessive fragmentation of bargaining units, while promoting units which are more directly linked to existing personnel authority.

The unit criteria in the bill fail to exclude supervisors as well as combining guards with non-guards. Both are excluded under the Executive Order program, in other public sector programs, and in the private sector based on potential conflict-of-interest problems. Public-sector laws in States which did not exclude supervisors, security guards and police have now moved in that direction. This bill would reverse that trend. And, employees engaged in administering the Act could be represented by a labor organization which also represents other groups of employees, or which is affiliated directly or indirectly with an organization which represents such a group of employees. These potential conflicts of interest definitely are not in the public interest.

Labor organizations could obtain national exclusive recognition to the detriment of any and all other recognized labor organizations, including the abrogation of agreements with other labor organizations [Secs. 501(i) and 504(b)]. This would permit one labor organization to obtain a monopoly and create a situation where that labor organization alone could represent all Government employees. This is contrary to the concept of the sanctity of agreements and stability of labor relations based on existing agreements. It also permits by simple devices the establishment of a single, all-powerful union of all Government employees to the exclusion of all others. This would create tremendous potential for adverse impact on the public interest from the vantages of equity, cost and disproportionate combinations of political and collective-bargaining power.

There could be automatic National Consultation Rights for every local exclusive representative [Sec. 504(a)]. Such a device would be untenable. It would require highly elaborate administrative coordination of every agency-level personnel management policy, and a response in writing to justify virtually every management policy.

Section 502(3) fails to include professional organizations as one of the groups with which agency management could discuss matters or policies that are of particular applicability to them or their members.

#### Entitlements

Although the bill prohibits discouraging membership [Sec. 701(a)(2)], it fails to prohibit encouraging membership. Yet, restrictions on both counts are found in the NLRA, E.O. 11491 and laws which have unfair labor practice provisions. This would effectively interfere with the employees' freedom of choice by permitting pressure on employees to join or participate in unions. In addition, although the bill gives employees the right to form, join and assist labor organizations and directs management to assure that employees are apprised of this right, it fails to direct agencies to apprise employees of their right to refrain from such activity.

At the request of a labor organization, Federal employees would be required to become members (union shop) or pay equivalent dues (agency shop) as a condition of initial and continued employment [Sec. 701(a)(2)].

This contravenes the civil service concept that labor organization membership or payment of dues as a condition of Federal employment is completely inappropriate. This goes even beyond private sector practices where the issue is negotiable. In the private sector, this condition for employment may be rescinded by an employee vote to revoke such provisions.

In addition, the bill requires that agencies withhold labor organization dues and initiation fees at no charge /Sec. 601/. This mandating of dues withholding goes well beyond private-sector practices, where the issue is negotiable, and beyond E.O. 11491, where the cost of withholding is negotiable. These devices would deny management any discretion whatever in responding to traditional objectives of labor organizations (union security, official time, and dues checkoff service); it grants them to labor organizations as a matter of right.

Full official time would be mandated /Sec. 1201/ for employees (1) called by either party to participate in any phase of proceedings, or (2) representing the labor organizations in negotiations, without limit as to number of employees. This would eliminate the economic disincentive against excessive solicitation, undue filing of complaints and grievances and excessive participation in third-party proceedings or in negotiating--with potential for impairment of agency operations. Collective bargaining would be subsidized to the advantage of labor organizations by making official time an automatic right. Even in the private sector, official use of employee time for negotiations and grievances is negotiable.

#### Negotiation

The retained rights of management in the public interest, as contained in E.O. 11491, the Postal Reorganization Act and inherent in various U.S. laws, are absent from H.R. 13. For example, there is no provision, as in the Order, that management officials of an agency would retain the right, in accordance with applicable laws and regulations, to direct employees of the agency, to hire, promote, transfer, assign, and retain employees in positions within the agency, and suspend, demote, discharge, or take other disciplinary action against employees, and the like. Management would be obligated to negotiate on matters with respect to the mission of the agency, its budget, its organization, etc. This bill would make virtually all aspects of employment negotiable /Sec. 201(i)/. Conceivably, public policy as it affects employment (the agency mission) would be negotiable.

Many items which are now determined by Congress or delegated to the Civil Service Commission would be subject to collective bargaining with potential for adverse effects--not only from the standpoint of costs, but also from the standpoint of equal treatment for employees similarly situated. For example, a labor organization with local recognition would be authorized to negotiate with local management over the entire range of employment issues, which would directly conflict with the equal-pay-for-equal-work policy by authorizing a system that would produce extreme combinations of pay and benefits at every local activity where a labor organization represents Federal employees.

The ability of Federal managers to guide an agency in the accomplishment of its mission would also be compromised by preempting agency regulations which conflict with negotiated agreements or restrict the scope of bargaining--reversing the current requirement that negotiated agreements conform to "appropriate" (higher) agency regulations [Sec. 503(c)]. Agencies or the Civil Service Commission could not make or apply rules or regulations where needed to protect the public interest and maintain efficiency of Government operations. Policies and regulations designed to achieve a desirable degree of uniformity and equity in the administration of matters common to all employees of the agency, or to employees in more than one subordinate activity, would be adversely limited. Such biased provisions of the bill certainly are against the public interest.

The definition of labor organization rights is overbroad and fails to state that management does not have to agree or compromise [Sec. 503(a)], having only the obligation to negotiate in good faith. This is much stronger than the NLRA Section 8(d) definition of bargaining.

The grievance definition [Sec. 201(h)] and procedure [Sec. 1101] set forth in the bill are so broad as to encompass every conceivable type of grievance. It would include many matters, which directly by law or indirectly by Civil Service Commission regulations pursuant to law, are covered by existing appeals procedures. Coupled with the provision [Sec. 1101(d)] giving direct, legal right to binding arbitration of grievances, this provision would turn over to arbitrators many decisions which Congress currently deems ought to be made by others--for example, classification appeals, equal employment opportunity appeals, performance-rating appeals, political interference appeals, etc. And for added imbalance, it fails to provide for the right of management to request arbitration.

#### Impasses

The impasse procedures of this bill are contrary to the concept of voluntary collective bargaining; they are the same as compulsory, binding arbitration without the necessary procedural protection [Sec. 901]. Since the Authority has the power to resolve an impasse, the effectiveness of mediation would become virtually nil. And, conceivably, a labor organization could strike with impunity if it also follows the impasse procedure, since there is no prohibition against the strike.

The bill's provision for compulsory, binding arbitration on agreement terms could prove detrimental to the bargaining process. Quick recourse to binding arbitration has been found to stifle efforts of the parties to resolve their own differences and encourage "holding something back" for the arbitrator. Furthermore, there is no opportunity for voluntary adjustment of disputes after mediation or an intermediate step for

fact-finding with recommendations for settlement in advance of binding arbitration.

#### Unfair Labor Practices

The bill specifies an independent category of unfair labor practices for any "person" [Sec. 701(c)]. Such a provision creates potent disincentive to initiative by an individual manager or supervisor in any situation of uncertainty involving personnel administration. Furthermore, attorneys who counsel agencies and Congressmen who make speeches, etc., may arguably be held guilty of unfair labor practices. This bill goes beyond all known labor relations law by permitting the Authority to require action against supervisors and managers, rather than the agency itself [Sec. 801].

There is no listing of an unfair labor practice for labor organizations to call or participate in a strike, slowdown or picketing against any Federal activity [Sec. 701(b)]. This, coupled with the supersedure proviso [Sec. 1704], casts doubt on the existing no-strike stricutures. Arguably, a strike would at most be an indirect unfair labor practice for refusal to comply with the impasse procedures of the bill. There would be no effective sanction against an actual strike.

#### Standards of Conduct

The bill establishes for labor organizations only a general requirement to maintain democratic procedures, prohibit conflicts of interest and maintain fiscal integrity [Sec. 1401]. Labor organizations in the current Federal program are subject to standards of conduct and reporting requirements similar to the Landrum-Griffin act for the private sector. This bill would release them from much of this responsibility. Under this bill, there is no obligation for labor organizations to demonstrate compliance with the stated standards.

#### Supersedure

The bill would supersede all previous statutes and Executive Orders concerning the same subject matter [Sec. 1704]. This raises serious questions as to the extent to which other civil service laws (e.g., all of Title 5, U.S.C.) may be overridden.

#### Costs

This bill will result in additional unwarranted costs as a result of a proliferation of appropriate units, the addition of union functions under the Act on government time, expenses related to the administration of the Act and extra cost to carry out agency obligations under the provisions of the Act.

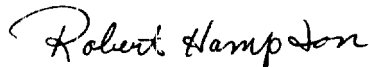


Therefore, because of the objections cited above, and others, the Civil Service Commission strongly recommends against enactment of the bill.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 13 would not be in accord with the program of the President.

By direction of the Commission:

Sincerely yours,

  
Robert E. Hampton  
Chairman

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-40342

June 22, 1973

The Honorable Thaddeus J. Dulski, Chairman  
Committee on Post Office and Civil Service  
House of Representatives

Dear Mr. Chairman:

We refer to your letter of January 9, 1973, requesting our report on the bill H.R. 13, to provide improved labor-management relations in the Federal service.

The bill would establish a comprehensive labor-management relations system for Federal employees. Currently, labor-management relations in the Federal Government is the subject of little substantive legislation although the area has been covered by a series of Executive orders. Executive Order No. 11491, October 29, 1969, as amended by Executive Order No. 11616, August 26, 1971, is currently in force with respect to this subject.

Whether it is desirable at this time to establish a statutory basis for labor-management relations in the Federal Government is a matter primarily for consideration of the Congress. We believe, however, that a thorough review of the desirability of congressional action would be appropriate at this time especially because of the growth of unionization, the fact that labor-management relations in the Federal Government is an evolving program, and because many provisions of controlling laws and regulations were enacted or promulgated without recognition of the potential for using the labor-management negotiation process in determining employee rights and benefits.

With regard to the provisions of H.R. 13 itself, we have the following comments:

Section 101(b). The right given employees to perform union duties by this provision combined with rights given them in section 1201 to use official time for participation in proceedings under the act might make it difficult for the Government to limit union members to use of a reasonable amount of official time for performance of union activities.

Section 201(b). It is a matter of concern to us in that the bill would cover the Legislative and Judicial branches of

the Government as well as the Executive branch. We believe that the status and functions of those branches are so dissimilar from that of the Executive branch that separate treatment thereof might be preferable. Specifically, in the case of the General Accounting Office, the nature of the duties and responsibilities of this Office frequently require the performance of special assignments for committees and Members of Congress, some of which are of an urgent or highly sensitive nature. The proper performance of these functions demands the utmost flexibility, latitude and independence of action in the area of personnel management. The settlement of disputes by the Federal Labor Relations Authority (FLRA) would, in our opinion, seriously handicap the Office in the performance of its functions. Similar situations may exist in other agencies of the Legislative and Judicial branches. Accordingly, should the bill receive favorable consideration it is requested the General Accounting Office be excepted from its provisions. Also, we suggest consideration be given to the necessity for exceptions or separate treatment being provided for the Legislative and Judicial branches as a whole.

Section 201(g), (h) and (i). These definitions do not define clearly the areas which would be subject to collective bargaining or the disputes which would be subject to settlement under the provisions thereof. Under present law pay rates, leave rights, hours of work, conditions for granting step increases, back pay benefits, severance pay benefits, veterans rights and various other fringe benefits are prescribed by statute for most employees. Those employee benefits as well as others such as travel, per diem and overseas allowances and differentials are subject to statutory regulations promulgated by the Civil Service Commission, the General Services Administration, the Department of State and other executive agencies. In addition this Office has the responsibility for settling all claims against the United States which responsibility involves the making of legal determinations as to the meaning of the applicable laws and regulations. All of the benefits mentioned above would be considered "conditions of employment" under H.R. 13 and would apparently be subject to collective bargaining as well as the disputes and grievance procedures which would be implemented thereunder. However, there is no provision in the bill

defining the extent to which collective bargaining could supersede provisions of law or regulation; nor does the bill identify the effect of its provisions on the present authority of this Office and the Civil Service Commission with respect to claims and employee appeals of personnel actions. Unless the scope and effect of collective bargaining is more precisely defined it would appear that significant conflicts concerning the enforcement of rights given by law or regulation could develop.

Therefore, we strongly urge that the bill if it is to receive favorable consideration be modified to clearly define the extent, if any, to which labor-management agreements negotiated thereunder could change or modify benefits presently prescribed by or pursuant to statute. We also believe that the bill should be modified to state specifically the extent to which dispute and grievance procedures established thereunder would be subject to the terms of existing law. See also Section 1704(a), H.R. 13.

Section 201(i). This provision would involve labor in what has traditionally been considered a management prerogative in that "contracting out" and "use of military personnel" are included as conditions of employment subject to labor-management procedures. Although it is recognized that contracting out and the use of military personnel could adversely affect employees, the inclusion of these broad areas as conditions of employment would appear to permit labor involvement in matters which are in most cases primarily matters for determination by management. Therefore it may be that those items should be deleted from the definition of "conditions of employment."

Section 201(j). In the definition of "supervisor" the presumption that a position is nonsupervisory based on salary rather than grade may be impracticable. Also the presumption that an employee is not a supervisor if he has responsibility for less than 10 employees could unduly expand the membership of unions. In that connection see the definition of "management official" under section 201(k). See also comments on section 701(a)(2), below.

Section 301. Concerning the FLRA which would be established by this section, we note that the Chairman and members thereof would be appointed by the President with the advice and consent of the Senate from a list of ten persons submitted to the President by the American Arbitration Association. Such a restriction on the President's authority to appoint might well be considered an infringement of his constitutional right to appoint Officers of the United States as provided in Article II, section 2, clause 2, of the Constitution. See 13 Op. Atty. Gen. 516 (1971); 41 *id.* 291 (1956). Further, it seems inconsistent with the prerogatives of the Federal Government to allow the determinations of a body which is not a part of the Government to restrict the choice of Government officials.

Section 401(d). Line 19, page 8, of the bill contains a reference to subsection (e) of that section (401) which apparently should read subsection (c).

Section 403(a). This section provides that the FLRA may appoint attorneys to represent it in court contrary to the general provision of law giving the Attorney General the responsibility for the conduct of litigation to which the United States is a party. 28 U.S.C. 516.

Section 501(i). This section provides that national recognition for a given unit supersedes local recognition previously given any unit incorporated within the larger unit. The Committee should consider whether this benefit to the larger unions is in the public interest.

Section 503(c). In view of the broad, though vague provisions of the act concerning the scope of collective bargaining, this provision, which would deny agencies the right to restrict the scope of such bargaining, could cause bargaining to be excessively complicated and could result in unwarranted encroachment of labor into management concerns.

Section 601. This section provides that the cost of Government collection of union dues and initiation fees would not be charged to the union and prohibits revocation of union dues allotments for periods of one year or more.

Under the present administrative provision an employee may revoke his allotment each 6 months and the cost of handling allotments may be charged to the unions. This provision in combination with the provisions of section 701(a)(2) would severely limit the right of an individual employee to choose not to support the union representing his unit.

Section 701(a)(2). We note that this provision would require union membership as a condition of employment at the request of the labor organization involved or else require the payment of a representation fee equal to the periodic union dues. We suggest that these requirements may be premature since the extent and effect of unionization under the provisions of the bill are not known at this time. This is especially true in view of the fact that the FLRA established under the bill would have broad power to designate bargaining units and to determine the employees to be covered by such units in a manner which would facilitate the formation of units of broad scope both in terms of area covered (national recognition) and types of employees included (professional). See Section 501, H.R. 13. Therefore, the better approach might be to delete provisions which require union membership or the payment of fees to the recognized union so as to permit employees to make their own decisions as to whether they wish to join or support a union.

Section 701(a)(3). Although this provision prohibits recognition of unions which are in any way sponsored by an agency it permits agencies to furnish "customary and routine services and facilities." Some further definition of the services and facilities contemplated by this provision would appear to be necessary.

Section 801 (generally). References in this section to the National Labor Management Relations Act, 1947, approved June 23, 1947, ch. 120, 61 Stat. 136, should be to the act since the title of the U.S. Code in which that act appears--title 29--has not been enacted into positive law.

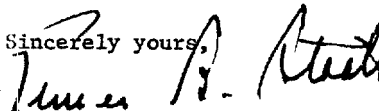
Section 801(b)(4). Under this provision the FLRA would be empowered to make findings as to the violation of the act by Government employees and could direct the punishment (including demotion, suspension or removal) to be imposed upon

offending employees. Aside from the fact that selection of punishment is more appropriately a management determination, if the bill were enacted in its present form it is not clear what effect that provision would have in view of 5 U.S.C. 7501, relating to suspension or removal of employees in the competitive service, and 5 U.S.C. 7512, relating to adverse actions against preference eligible employees. It would seem preferable to amend section 801(b)(4) to require that the FLRA report violations to the agency heads involved who would retain their authority to select and carry into effect appropriate disciplinary action.

Section 1501. We suggest that the criminal provision contained in this section should be made by an amendment to the Criminal Code (Title 18, U.S. Code).

Generally, consideration should be given to the substantive provisions of this bill being an amendment to title 5, United States Code.

Sincerely yours,



Comptroller General  
of the United States

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
WASHINGTON, D.C. 20301

22 May 1973

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post Office  
and Civil Service  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

Reference is made to your request for the views of the Department of Defense with respect to H. R. 13, a bill "To provide for improved labor-management relations in the Federal service, and for other purposes."

The purpose of the bill is to establish a framework in law for the conduct of collective bargaining between labor organization representing employees of the Federal Government and the agencies that employ them. H. R. 13 contains a proposed statement of policy with respect to employee and labor organization rights and would establish administrative machinery for the protection of these rights and the resolution of labor-management disputes arising out of the collective bargaining process. The proposed legislation would entirely supplant the collective bargaining program for Federal employees which now exists pursuant to the provisions of Executive Order 11491, as amended, "Labor-Management Relations in the Federal Service."

The Department of Defense recommends against enactment of H. R. 13. A sound labor-management relations policy and viable labor-management relations program already exist for Federal employees. This policy and program are still relatively young, dating primarily from the issuance of Executive Order 10988 in January 1962. Since that time, as Federal agency managers, employees, and Federal employee unions have gained experience in collective bargaining, adjustments have been made in rules, procedures, and administrative structure in order to improve and expand the program. Executive Order 10988 was superseded by Executive Order 11491, issued in October 1969, and the latter Order was amended by Executive Order 11616 in August 1971. The 1969 and 1971



program changes were made by the President after developments under the program had been studied and the views and recommendations of agency management and labor organization representatives had been carefully considered.

This evolutionary process, in our view, has served the public interest well by enabling adjustments to be made commensurate with the needs of the Federal service and with the level of experience and sophistication attained by the parties involved. Executive Order 11491, as amended, provides for continuing evolution by mandating the Federal Labor Relations Council to make periodic reports and recommendations to the President concerning the program. There is every reason to believe that program improvements will continue to be made through this process, ensuring that collective bargaining in the Federal sector will develop and mature in an orderly manner which is responsive to the special needs and circumstances of the Federal Government. It would be highly unfortunate if this evolutionary process were to be interrupted, and the present program's built-in capacity for further growth and change lost, by fixing in law the basic framework of a Federal sector collective bargaining program.

H. R. 13 provides for an abrupt transplant of many private sector practices into the Federal Government without adequate recognition of the fundamental differences between the two environments. Many differences arising out of the distribution of powers in the Federal Government, the requirements of the civil service merit system, the financing of pay and fringe benefits, the ready access which unions have to the Congress to obtain many of their goals, the automatic annual pay increases virtually guaranteed by the operation of the comparability pay statutes for both blue and white collar employees (PL 92-392 and PL 91-656), and the nature of public services themselves, require that a system of labor relations different from that of the private sector be developed. We firmly believe this system can best be evolved at this time by Executive order rather than by legislation.

We are strongly opposed to the enactment of H. R. 13, not only because it would preclude the further evolution of the Federal labor-management relations program by Executive order, but because it contains many unsound and costly features which could have severe adverse effects upon the operations of the Federal Government and the capacity of Federal agencies to effectively carry out the statutes they are charged with implementing.

H. R. 13 provides for a virtually unlimited scope of bargaining without any reserved management rights, and creates the potential for the establishment of public policy by collective bargaining and for the undermining of the civil service merit and job classification systems. The almost completely unrestricted scope of bargaining provided for in H. R. 13, combined with the existence of thousands of different bargaining units in the Federal service, would establish a situation in which agency managers' ability to manage and to maintain reasonable efficiency and economy of operations would be seriously jeopardized. In addition, H. R. 13 eliminates important existing employee rights, and creates a potential conflict of interest situation for thousands of supervisory personnel by providing for their representation by labor organizations. It would require negotiations on fringe benefits and other major cost items in the executive branch and judicial branch while retaining for unions the capacity to seek in Congress what has not been attained through the bargaining process.

Some of the features of H. R. 13 which produce the undesirable results outlined above are:

1. Section 201(j) would create a presumption mandating the exclusion from the definition of "supervisor" of any employee paid less than the top rate of GS-10 and any employee with less than ten subordinates. Section 201(k) would define "management official" in such a way as to exclude many who are covered by the definition in use under Executive Order 11491. Section 501(d) would not exclude supervisors from bargaining units. The result of these provisions would be to permit most persons with significant supervisory and managerial responsibilities to be represented by unions and to be included in bargaining units together with nonsupervisory employees, thereby reinstituting the extensive potential conflicts of interest which have been eliminated under the present Order.

2. The bill, in its statement of employee rights in section 101(b), omits any reference to the existing right of Federal employees to refrain from joining or assisting a labor organization; further, section 701(a) would require agency management, at the request of a union and without any vote among the affected employees, to make union membership a mandatory condition of employment for all employees in a given bargaining unit. Not only would employee rights be thus significantly diminished,

but the bill is completely silent with respect to the rights of agency management. No provision is made for the protection of agencies' right to determine their missions, budgets, organization or staffing patterns, as in section 11(b) of Executive Order 11491, or for the preservation of management's right to select, assign, discipline, and lay off employees and take other actions essential to the management of an agency as provided for in section 12(b) of the Order.

3. Section 503(c) would prohibit agencies from restricting the scope of bargaining or issuing regulations in conflict with any negotiated agreement. This section, applied in conjunction with section 201(i), which lists a broad variety of matters which would be subject to bargaining, would make it impossible for Federal agencies to establish uniform personnel management policies. Within the Department of Defense, for example, there are currently approximately 1,900 bargaining units containing about 680,000 employees. Under the proposed legislation, this Department would have virtually no control over personnel policies and practices in the activities concerned, nor any legal means of distinguishing between issues suitable for local negotiations and those appropriate for bargaining at the national level.

4. Section 501(d), which contains proposed criteria for appropriate bargaining units of Federal employees, would drop entirely the present requirement that such units must promote effective dealings and efficiency of agency operations. Section 201(i) would make such matters as contracting out and the use of military personnel subject to bargaining. The removal from management of the ability to make decisions in this area on the basis of economic considerations and military readiness requirements would cripple the ability of the military departments to accomplish their mission efficiently and effectively. Section 1201 of the bill, which would require the grant of official time to employees for participation in any capacity in negotiations and all other types of collective bargaining program proceedings, would also add substantially to the cost of the program to the taxpayer. Section 701(b), which omits the present prohibition against labor organizations' calling strikes, work stoppages or slowdowns, would increase the probability of disruptive and costly incidents of this nature.

5. The bill, unlike Executive Order 11491, makes no provision for exclusion from the Federal collective bargaining program of organizations such as the National Security Agency, the inclusion of which would be inconsistent with national security requirements, nor does it

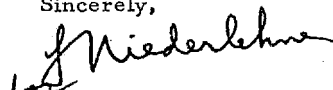
provide for the exclusion of organizational segments primarily concerned with agencies' internal security. Further, the definition of "employee" in section 201(b) would include the thousands of non-U.S. citizen civilian personnel employed by agencies of the United States Government in foreign areas. The bill would thus conflict directly with existing U.S. commitments in various intergovernmental treaties and agreements, most of which provide for the employment of host country nationals by the U.S. Government in conformance with the labor law, customs and conditions of employment which prevail in the country concerned.

6. Section 1704(a) states: "This Act supersedes all previous statutes and Executive Orders concerning this subject matter." This language is so broad and so vague as to raise serious questions as to the effect of the bill on all existing laws affecting the Federal civil service and the authority of heads of departments and agencies.

The foregoing discussion outlines some, but by no means all, of the objectionable features of H. R. 13. Because of these features, and the fact that a sound Federal employee labor-management relations policy and program already exist which are capable of administrative modification as the need becomes apparent on the basis of experience, the Department of Defense strongly recommends against enactment.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of H. R. 13 would not be in accord with the program of the President.

Sincerely,

  
for J. Fred Buzhardt

THE GENERAL COUNSEL OF THE TREASURY  
WASHINGTON, D.C. 20220

MAY 22 1973

Dear Mr. Chairman:

Reference is made to your request for the views of this Department on H.R. 13, "To provide for improved labor-management relations in the Federal service, and for other purposes."

The bill would establish a framework in law for the conduct of collective bargaining between the labor organizations representing Federal employees and their employing agencies. It would replace entirely the existing Federal labor management program created by Executive Order 11491, as amended.

Viewing the bill as a whole, we believe that it contains many unsound and costly features which would have detrimental effects upon the operations and effectiveness of the Federal government, and, therefore, we are strongly opposed to its enactment. The flexibility needed to deal with the fluid and evolutionary nature of public sector labor management relations would be lost if the procedures for conducting labor management negotiations were frozen into law.

The following are our comments on certain aspects of the bill which we find exceptionally objectionable.

Section 101, which sets forth the declaration of policy, makes no provision for the conflict of interest problems created when management officials, supervisors, confidential employees, etc., participate in the management of a labor organization or serve in the capacity of organization representatives. Nor is there any provision for the special problems and separate standards traditionally applicable to the FBI, CIA, Secret Service, etc., as well as those other organizational entities performing internal or national security functions.

Section 201 (h), which defines "grievance", is so broad as to eliminate all other means of administrative review of employer actions. The ultimate result of this definition would be that private arbitrators would not only interpret the terms of bilaterally determined collective bargaining agreements but would also rule on cases involving alleged violations, misinterpretations and misapplications of laws, rules and regulations. The latter would not only cause confusion and inconsistency in government but would subvert the legitimate roles of the Civil Service Commission, the Comptroller General and the Courts.

Section 201 (i), which defines "conditions of employment", makes almost every management action negotiable when used in connection with section 503. There are no reserved management rights for determining mission, budget, technology, staffing, internal security, etc., or for hiring, firing, promoting, etc.

Section 201 (j), which defines "supervisor", is arbitrarily narrow and seems designed solely to increase the number of employees eligible for union representation and the dues checkoff. If this definition were adopted, the management team approach would be undermined. Many legitimate supervisors, responsible for implementing management programs and policies, would be placed in units with the rank and file. The result would be a government-wide decrease in organizational responsiveness. In addition, this great reduction in the number of employees considered to be supervisory would leave the government unable to marshal even a skeleton force of supervisors to maintain government operations in case of a strike.

Section 501 (b) would bar certification of a labor organization when majority status is achieved by unlawful employer assistance but would make no similar provision for unlawful union conduct.

Section 501 (d) would set forth criteria to be considered in determining the unit to be recognized. We believe that additional unit criteria are needed. Units in the Federal government should not only meet a "community of interest" criterion but should also promote effective dealings and efficiency of agency operations. These additional criteria have, under Executive Order 11491, proved to be essential to ensure effective Federal labor-management relations.

Section 501 (i) would establish, per se, that national exclusive recognition for an agency is appropriate. This may or may not be the case depending on each agency's organization. Such a determination should be made subject to the same criterion as any other unit determination.

Section 601 would provide dues checkoff free of charge to labor organizations thereby narrowing the scope of bargaining to union advantage. In addition, an employee's dues withholding authorization would be irrevocable for a period of not less than a year and up to as long as three years. This means that even if an employee resigns from the union, dues would continue to be deducted from his salary for as long as three years.

Section 701, which enumerates unfair labor practices, contains nothing making striking, slowing down, picketing, etc., unfair labor practices.

Section 701 (a) (2) would require agencies, at union request, to establish as a condition of employment that employees become union members (union shop) or that they pay the equivalent of union dues (agency shop).

Under the union shop, the union could enforce union discipline by threatening to expel a member from the union thereby requiring the government to remove him from his Federal job. Under the agency shop, Federal employment would remain contingent upon paying a fee to the union. These requirements are contrary to the civil service concept and are completely inappropriate in the Federal service.

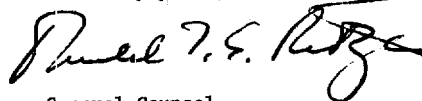
Section 801 (b)(4) would remove from agencies the basic managerial authority and discretion to discipline or refrain from disciplining its own employees. Such extensive power does not even exist in private sector labor relations. Discipline should remain a management tool to be used to secure improved employee conduct or performance and not as a penal device imposed by a third party "judge".

Section 1201 by providing for full pay to employees participating in any phase of proceedings under the Act would narrow the scope of bargaining to union advantage and create a government subsidy to labor union activities. It would also eliminate economic restraints on excessive solicitations, complaints and grievances, as well as excessive participation in third party proceedings and bargaining.

Section 1704 raises serious questions as to the extent to which all other Civil Service laws may be or are superseded.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee and that enactment of H.R. 13 would not be in accord with the program of the President.

Sincerely yours,



ACTING General Counsel

The Honorable  
Thaddeus J. Dulski, Chairman  
Committee on Post Office and  
Civil Service  
House of Representatives  
Washington, D.C. 20515

OFFICE OF THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

MAY 25 1973

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post Office  
and Civil Service  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your request for the Department of Transportation's views on proposed legislation H.R. 13, "Federal Employee Labor-Management Act of 1973".

We in the Department of Transportation are especially pleased to have the opportunity to comment on this bill. Our transportation mission requires that we be constantly sensitive to matters such as this bill which could have a great impact on our ability to provide services. We recognize that sound labor relations are essential to carrying out our transportation mission. Our views may have particular significance since they reflect the insight of a Governmental agency that has recently experienced the impact of a major labor-management conflict. The 1970 strike of Air Traffic Controllers seriously affected the general public, private industry and to some extent military operations. There is no guarantee that this may not happen again anywhere in the Government, but we believe the possibility can be greatly reduced through a responsible labor-management relations program geared especially to the needs of the public service.

The development of labor relations under the aegis of Executive Orders over the past 11 years has proven to be a viable, flexible and realistic system capable of responding to both the unions and management's need in a bilateral relationship. Both parties have achieved experience, maturity and recognition of each other's role in a relatively short period of time under the flexible system established by EOs 10988 and 11491. This has been an evolutionary process which has not nearly reached its full potential in terms of developing sophistication in negotiations, grievance handling and third party proceedings.



During the relatively short period since 1961 there have been three significant changes in the Executive Orders which cope with the ever-increasing and changing demands needed to establish meaningful bilateral relationships. No doubt there will be requirements for more changes but they should be permitted to evolve as the needs of the service (employees and management) dictate. Those changes in the program which have been effected in the past on the basis of demonstrated need would have been difficult to achieve had the labor-management relations program been legislated as is now proposed.

H.R. 13 appears to be oriented toward bringing public sector labor-management relations in line with that of the private sector. Because the Government is service oriented and industry is profit oriented, we strongly believe that the objectives of each are better served by somewhat different approaches to labor-management relations. Therefore, we should not attempt to provide by legislation for the public sector a program which was designed to cure different ills in the private sector at a different time.

While we endorse progressive leadership in labor-management relations, we are of the opinion that the proposed bill would be counter productive to the orderly evolution of the bilateral relationship in the Federal sector. The Department of Transportation strongly recommends against enactment of H. R. 13 from both a philosophical as well as a practical point of view.

The following specific comments are offered for your consideration relative to our recommendation:

1. Section 101(a) would impose a strict management neutrality requirement similar to that contained in our current labor relations program. Under the National Labor Relations Act private sector management is not required to observe the same neutrality and therefore may to some degree openly oppose union organizing. It seems unrealistic that the neutrality provision in the legislation for the Governmental program would be more restrictive than in the private sector.
2. Section 201(j) in effect identifies supervisors in terms of grade and numbers supervised. These factors do not take into consideration the duties and responsibilities assigned which are the true distinctions

between supervisors and non-supervisors. Using the bill's definition a large percentage of our supervisory workforce would be eligible to be in units along with rank and file employees represented by unions. This situation would be unacceptable from the standpoint of actual and potential conflict of interest relationships. We depend on our first line supervisors as management spokesmen and as such they should not be influenced by any ties with a union. Additionally, first line supervisors would have little voice in the outcome of a representative election, decided by a simple majority of those voting, when non-supervisory employees in a unit would be casting the vast majority of the ballots.

3. Section 301(a) would establish a Federal Labor Relations Authority somewhat comparable to the National Labor Relations Board except with greater power and influence. In fact, the grant of authority is sufficiently broad that it would dilute the authority vested in top management to make decisions in a broad range of administrative matters since they would be subject to third party review. This could have a staggering impact on the total Governmental operation since many matters now governed by statutes would become negotiable.
4. The bill contains no management's right provision and would appear to open, as conditions of employment, virtually every area including the mission and budget of an agency. To open all these areas would in effect subject public policy to the bilateral process. The language of the bill in the negotiability area is so vague, ambiguous and otherwise inadequate that it would be virtually impossible to take a position on a question involving negotiability. As we see the bill, a number of statutes which now regulate Federal personnel matters would have to be repealed with the enactment of this bill. The existing legislation enacted over the years takes into account a degree of equity for all Federal employees. The enactment of this bill would create widespread inequities in basic areas where we believe there should be uniform practice, i.e. pay, fringe benefits, merit promotions, job classification, etc. In addition, we believe contractual agreements could erode certain benefits employees were led to believe were guaranteed by statute when they chose Government employment.
5. The free choice now enjoyed by Federal employees to join or assist a labor organization would be eliminated by the union security provision contained in Section 901(a). We are of the opinion that the merit

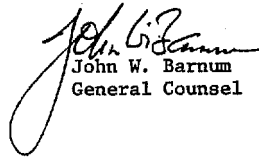
system would also adversely be affected if union membership or requirement to pay dues should become a condition of employment. Unions have prospered in the public sector over the past years without a security arrangement guaranteed by law. Statistics show that unions now represent well over a million employees in exclusive units within the Executive Branch alone as opposed to only 180,000 in 1963. Above all we strongly believe that public employees should not be forced to join or pay tribute to unions as a condition of employment.

6. Section 1201 of the bill would require that union representatives be given official time to conduct most all activities associated with the program. This indirectly would be requiring the taxpayer to support union activities. We believe that employees who desire union representation should be prepared to support those efforts.
7. Section 201(1) indicates that national recognition would supersede all other recognition in the unit. This provision would in effect benefit the larger unions and would effectively eliminate the smaller unions. We believe the competition among unions is healthy since it requires that they remain responsive to their members to avoid being replaced by another union.
8. There is one other extreme difference between H.R. 13 and EO 11491. The Executive Order makes it an unfair labor practice for a union to engage in a strike, work stoppage, slowdown, or picketing, whereas the bill makes no mention of these. Without this deterrent, the probability of such an action would be greatly increased.
9. Section 801(b)(4) would violate the constitutional due process rights of a "supervisor or official" unless he were made a party to the proceeding and afforded minimal due process rights.

In conclusion, we feel there are two final matters which deserve careful consideration. First, a labor relations system established by an Executive Order provides all the machinery needed for substantive participation by unions in decisions affecting employees they represent. It would be a disservice to all concerned to disrupt a successful evolutionary program which already provides the framework for a sound labor-management program. Secondly, to relax the present restraints on negotiable issues as required by the bill, would undoubtedly result in increased expenditures by agencies, thus escalating even further the costs of Government. We believe it is in the public interest to provide an equitable labor-management relations program, but one which is public oriented with careful scrutiny given to any proposal which may adversely impact on the taxpayer.

The Office of Management and Budget advises that there is no objection to the submission of this report for consideration of the committee, and that enactment of H.R. 13 would not be in accord with the program of the President.

Sincerely,



John W. Barnum  
General Counsel

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MAY 29 1973

Honorable Thaddeus J. Dulski  
Chairman, Committee on  
Post Office and Civil Service  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

This letter is in response to your request of January 9, 1973 for a report on H. R. 13, a bill "To provide for improved labor-management relations in the Federal service, and for other purposes."

The bill would provide a statutory base to replace the collective bargaining program for Federal employees which now exists under Executive Order 11491, as amended, "Labor-Management Relations in the Federal Service."

The Department of Health, Education, and Welfare recommends against enactment of H. R. 13. Executive Branch policies governing relationships between labor organizations and agency management were established by Executive Order 10988 in January 1962. Many of the causes of agency and union dissatisfaction were removed, and a more satisfactory framework for responsible dealings by both sides was provided when such policies were changed by Executive Order 11491, issued in October 1969, and by Executive Order 11616, of August 1971. In our view, the Executive Branch has a sound labor-management relations program which provides for adjustments and growth in the public interest, and that a statute would be desirable only after further experience.

H. R. 13 imposes National Labor Relations Act practices on the Federal sector without recognition of the fundamental differences between the two environments. The period of adjustments and growth we have experienced since 1962 has been very helpful in moving toward the NLRA-type system. However, in our opinion, our developmental pattern is not yet ready for the overlay of a statutory system, without jeopardizing the Civil Service Merit System and the public interest.

Honorable Thaddeus J. Dulski

There are a number of objectionable features of H.R. 13 which apply universally to most if not all of the Executive Branch, and it is assumed the U. S. Civil Service Commission will be identifying them. However, of specific applicability to the Department of Health, Education, and Welfare is Subsection 201(b), which defines an "employee" to include members of the commissioned corps of the Public Health Service. The corps is one of the "uniformed services" as defined in 5 U.S.C. 2101(3) along with the armed forces. We note that Subsection 201(b)(1) of H.R. 13 does exclude members of the armed forces from the definition of "employee." We believe the basis for excluding the armed forces is substantially applicable to the exclusion of the commissioned corps of the Public Health Service. Therefore, the definition of "employee" should remain that which is currently applicable and as is set forth in 5 U.S.C. 2105.

We recommend that neither H.R. 13 nor any other legislation be enacted to replace current policies governing labor-management relations in the Executive Branch.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report and that enactment of H.R. 13 would not be in accord with the program of the President.

Sincerely,



Paul C. Baker  
Acting Secretary

DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

May 25, 1973.

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post  
Office and Civil Service  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for a report on H.R. 13, a bill "To provide for improved labor-management relations in the Federal service, and for other purposes."

The Department of Agriculture recommends against enactment of this bill.

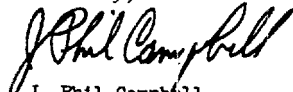
A Federal Labor Relations Program now exists under Executive Order 11491, as amended. We believe that substantial progress has been made since introduction of this program in 1962. Labor and management have learned and are continuing to learn how to deal in a bilateral relationship. Needed policy changes and greater challenges were introduced in 1969 with the issuance of E.O. 11491 and in 1971 with E.O. 11616. We earnestly believe that this development process, via the Executive Order route, serves the best interests of the Federal service. We further believe that direction by Executive Order at this stage is essential since it provides the flexibility which is needed to respond more readily to evolving conditions and circumstances in a still developing program.

Aside from the above, we seriously object to a significant number of the provisions of H.R. 13. Our objections are detailed in the enclosure to this letter.

In our opinion, the labor-management relations program now in effect under E.O. 11491, as amended, is sound, viable, and adaptable to changing conditions. This fact when considered in conjunction with the serious deficiencies in H.R. 13, compels us to recommend against its enactment.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 13 would not be in accord with the program of the President.

Sincerely,

  
J. Phil Campbell  
Under Secretary

Enclosure

UNITED STATES DEPARTMENT OF AGRICULTURE

Detailed Objections to H.R. 13, a bill "To provide  
for an improved labor-management relations in the  
Federal Service, and for other purposes."

Employee Rights - Section 101 (b) makes no reference to the existing right of Federal employees to refrain from joining or assisting a labor organization. This is followed by Section 701.(a) (2) which requires the Agency to impose membership in the exclusive representative labor organization or the payment of a representation fee as a condition of employment if such is requested by the exclusive representation.

We firmly believe that Federal employees should retain the basic right to join or not to join a labor organization and that a representation fee should not be imposed as a condition of employment.

Scope of Bargaining - Section 201 (i) lists as "conditions of employment" many matters presently embodied in law or in the rules and regulations of the Civil Service Commission (CSC). In turn, Section 503 (c) protects this wide scope of bargaining by restricting Agency issuance of conflicting rules or regulations.

We support a broadening of the scope of bargaining commensurate with law and the level at which the representation unit is structured. However, we would oppose opening up matters of law and higher level administration to local negotiations. In our opinion, the results would be chaotic. Agencies would find it practically impossible to maintain a semblance of equity and uniformity in their personnel management programs.

Supervisory Employees - Section 201 (j) in defining a "supervisor" excludes employees paid less than the top grade of a GS-10 and those with direct responsibility over less than ten employees.

This provision has very serious implications for the Department of Agriculture because of the relatively small and decentralized nature of many of our component organizations. In many instances, particularly at our station, county, and district levels, none of the employees would meet the supervisory criteria established under the bill either because of the small size of the activity or the applicable salary level limitations. This fact raises the question as to who would represent management at the activity since it is doubtful that an employee who is not a supervisor within the meaning of the bill could logically be utilized to act for management. This would apply in respect to program direction as well as implementation of the provisions of an agreement negotiated at a higher management level and applicable to the employees at the activity. Invariably, this would result in operations being supervised by an individual far removed from the actual operations for which responsibility is assigned. In our opinion, this would seriously handicap our managers in carrying out their assigned missions.



Grievances - Section 201 (h) includes within the meaning of a "grievance" any matter now subject to final administrative review outside an Agency under CSC regulations or law.

In essence, this would place arbitrators, as provided for in Section 1101 (d), in a position of interpreting Government-wide policy or law. In our opinion, varied and inconsistent results would occur. The resulting management problems would be unending and equity between employees severely affected.

Reserved Management Rights - We note that the bill does not reserve any rights to management as under the existing E.O.

We consider the omission of a management rights clause to be a serious deficiency in the bill. It will have a detrimental effect on an Agency's ability to manage its mission, budget, and organization as well as other matters essential to proper management. In our opinion, it is absolutely essential that a basis from which to manage be retained for management in any legislation.

Strikes - The bill is silent in respect to prohibiting strikes.

We wish to emphasize the need for existing prohibitions against strikes to remain in effect within the Federal service.

UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405

MAY 25 1973

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post Office  
and Civil Service  
House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Your letter of January 9, 1973, requested the views of the General Services Administration on H.R. 13, 93rd Congress, a bill "To provide for improved labor-management relations in the Federal service, and for other purposes."

Although GSA would not oppose effective legislation which would protect the fundamental rights of both management and labor, it is our opinion that H.R. 13, as drafted, is inequitably slanted toward the unions to the detriment of economy, efficiency and effectiveness of Federal agency operations.

The bill in essence would: (1) immediately provide for both a union and/or an agency shop; (2) allow labor organizations to strike in the event that an alleged grievance with management was not settled to the union's satisfaction, as well as during contract negotiations; (3) negate and eliminate any and all "management rights"; (4) open the scope of bargaining to include wages, hours and any other terms and conditions of employment, regardless of agency regulations, Federal personnel procedures or other laws to the contrary; and (5) abolish the role now performed by the Civil Service Commission relating to labor-management relations as well as the Commission's role in adverse action appeals procedures, the Federal Labor Relations Council, the Federal Service Impasses Panel, the Assistant Secretary of Labor for Labor-Management Relations, and in lieu thereof place full authority for the functions now performed by the above-mentioned offices in the hands of a three man Federal Labor Relations Authority (FLRA).

The independent FLRA would not be bound by any laws, executive orders, or regulations relating to the scope of bargaining, disciplinary actions or dismissal of Federal employees, strikes by unions and/or employee members, pay, fringe benefits of all types, and agency rights to contract out work. Further, management would seem to have no specific rights to secure relief from strikes by labor organizations or its members for any purpose, including secondary boycotts; jurisdictional disputes or frivolous grievances or other disputes.

As written, the bill would open a "Pandora's Box" in the field of labor-management relations. It would increase the cost of government operations, reduce the efficiency of agency operations, and basically negate management's right to manage.

Specifically, we object to provisions of the bill as follows:

The effect of section 201(i) would be to make practically all "conditions of employment" negotiable. We do not agree with this concept. We feel especially that such matters as budget, mission, organization, and internal security concerns of an agency should not be thrown open to the collective bargaining process.

Under section 201(j), all employees below the top step of GS-10 or who do not have direct responsibility over at least ten employees would be presumed not to be supervisors. We do not agree with these artificial criteria. Many employees below GS-10 or who supervise less than ten employees may perform full supervisory duties and responsibilities and would face conflicts of interest if included in a unit of exclusive recognition.

Section 501(b) would make a secret ballot election for employees optional and allow the FLRA to certify exclusive recognition on the basis of authorization cards. We do not agree with this provision. The secret ballot election requirement affords each employee the opportunity freely to vote his own preference without undue influence.

Section 501(d) applies only the "community of interest" criterion in establishing appropriate bargaining units. The two other essential criteria now contained in section 10(b) of Executive Order 11491, concerning "effective dealings and efficiency of agency operations", are eliminated.

Section 501(i) would allow the granting of national exclusive recognition to a labor organization to preempt any other type of recognition (regional, field office, etc.). We do not believe that the securing of national recognition status by a labor organization should be permitted to eliminate a regional recognition which both labor and management may have previously agreed is satisfactory.

Under section 504(a), all exclusively recognized units automatically would receive national consultation rights. Such a procedure would be administratively impossible to handle. GSA alone has over 160 exclusively recognized units. The need to consult with each unit, prepare and secure statements, and make counterproposals to proposed personnel policies, regulations, and other proposals affecting working conditions, would so throttle management activity as to preclude needed program changes.

Section 601 would grant automatic dues "check-off", without cost to the union which benefits from the service. We believe that all aspects of this item should be completely negotiable, and not a matter of statutory right.

Section 701(b), on unfair labor practices, does not include the present provision of Executive Order 11491 which states that a labor organization shall not "call or engage in a strike, work stoppage, or slow-down; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;" (section 19(b)(4)). We believe that this prohibition should be retained.

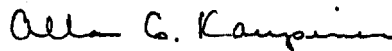
Section 1101(b) would give only to labor organizations the right to present and process grievances and submit them to arbitration. Indeed, "grievance" is defined in section 201(h) as "any complaint by an employee or by a labor organization concerning any aspect of the employment relationship with an agency...." We feel that the same right with respect to grievances should be extended to management, as in section 14 of Executive Order 11491. Moreover, we believe that the grievance procedures should be limited to differences over the interpretation and application of the terms of a negotiated agreement.

Section 1201 would grant employees official time for participation in any phase of proceedings under the bill. We do not agree with the automatic granting of such a right, which should be treated as a completely negotiable item.

Section 1401, in laying down certain requirements for labor organizations representing or seeking to represent employees pursuant to the bill, does not include the requirement of section 18(c) of Executive Order 11491 for the filing of financial and other reports, which is comparable to the financial reporting procedures required in the private sector under the Landrum-Griffin Act.

The Office of Management and Budget has advised that there is no objection to the submission of this report to your Committee and that enactment of H.R. 13 would not be in accord with the program of the President.

Sincerely,



Allan G. Kaupinen  
Assistant Administrator

TENNESSEE VALLEY AUTHORITY  
KNOXVILLE, TENNESSEE 37902

OFFICE OF THE BOARD OF DIRECTORS      FEBRUARY 15, 1973

The Honorable Thaddeus J. Dulski, Chairman  
Committee on Post Office and Civil Service  
The House of Representatives  
207 Cannon House Office Building  
Washington, D. C. 20515

Dear Mr. Dulski:

This is in response to your letter of January 9, 1973, requesting our views with respect to H.R. 13, "To provide for improved labor-management relations in the Federal service."

The bill would establish a framework in law, somewhat like that provided by the National Labor Relations Act for private industry, for the conduct of collective bargaining between labor organizations representing employees of the Federal Government and the agencies that employ them. It also would create certain employee and labor organization rights and benefits and would establish machinery for the protection of those rights and the resolution of labor-management disputes.

The TVA Board has a long-standing policy of encouraging TVA employees to participate through their labor organizations in decisions which affect them. Under this policy TVA has experienced more than three decades of effective collective bargaining relationships. Our union-management relations are characterized by joint problem solving, experimentation, and good faith. At the present time all but 1,800 management employees and a few nonmanagement employees out of a total of over 23,500 employees are represented under two collective bargaining agreements negotiated with the Tennessee Valley Trades and Labor Council and the Salary Policy Employee Panel. The Council is composed of 16 international craft unions and the Panel is composed of 3 AFL-CIO unions and 2 independent unions. The negotiated agreements cover most conditions of employment except those areas prescribed by law which, in the case of TVA, are relatively limited.

Except for the requirements of the prevailing wage and merit and efficiency provisions of the TVA Act and the strike prohibition in 5 U.S.C. § 7311, TVA's collective bargaining agreements have been made and have functioned without specific legislative direction.

The Honorable Thaddeus J. Dulski

These agreements which long ante-dated Executive Orders 10988 and 11491 were excluded from the coverage of the orders by the "grand-father" clause contained in each of them. In determining the appropriateness of bargaining units, the scope of collective bargaining, procedures for contract administration, and settlement of disputes, TVA has generally followed the guidelines and precedents established by the National Labor Relations Act, the National Labor Relations Board, and prevailing practice in industry. These guidelines have been particularly appropriate since TVA in its unique status as a largely self-financed Government corporation is engaged in large-scale force account construction, and operation and maintenance of power and chemical plant facilities. Since our employees currently have full representation in a well-established and effective ongoing collective bargaining relationship, the TVA Board sees no need for additional labor legislation applicable to TVA. On the contrary, we believe that legislation such as that proposed in H.R. 13 which seems to have been designed mainly for the competitive service could prove disruptive to the existing favorable labor-management relations in TVA.

The following provisions of the bill cause us particular concern:

1. The definition of "labor organization" in Section 201 appears to exclude unions not affiliated with a national or international union, federation, council, or department. Two unions which have represented TVA salary policy employees for many years are unaffiliated, as is the Salary Policy Employee Panel itself. The Tennessee Valley Trades and Labor Council is not directly affiliated although it is made up of representatives of the constituent international unions.
2. The definitions of "supervisor" and of "management official" would result in many key supervisory positions being placed in bargaining units. This would have an adverse effect on union-management relations in industrial operations such as those in TVA.
3. The authorization of the Federal Labor Relations Authority in Section 801 to order an agency to take disciplinary action against a supervisor or official for violating the provisions of the bill appear to go far beyond granting mere relief in cases of unfair labor practices. We feel that such disciplinary action should be the responsibility of the agency head.

The Honorable Thaddeus J. Dulski

4. The authority of the Federal Labor Relations Authority under Section 901 to settle negotiation impasses conflicts with the provision in the TVA Act for the Secretary of Labor to settle negotiation impasses regarding rates of pay for TVA trades and labor employees. Also, depending on how the authority is used, it might undermine the collective bargaining process by making third-party determinations too accessible.
5. The provision in Section 1101 for a grievance arbitrator to decide questions of arbitrability might cause serious difficulties for TVA because of the comprehensive coverage of its grievance procedures.

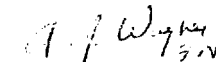
The bill grants certain benefits which in our opinion should be matters for negotiation:

1. The automatic granting of a union shop or an agency shop upon request of a recognized union.
2. The granting of time off without loss of pay or benefits to any employee called on by either party to participate in any phase of proceedings under the Act.
3. The checkoff of membership dues and initiation fees without charge.

We believe TVA's long history of innovative and successful union-management relations clearly demonstrates that no additional legislation is required or desirable in its case in order to provide for effective collective bargaining, and we therefore urge that TVA be excluded from the coverage of H.R. 13. This could be accomplished by inserting the words "but excluding the employees of the Tennessee Valley Authority" in line 1, page 3, immediately following the word "funds."

The Office of Management and Budget advises that it has no objection to the presentation of this report and that enactment of H.R. 13 would not be in accord with the program of the President.

Sincerely yours,



Aubrey J. Wagner  
Chairman

FEDERAL MEDIATION AND CONCILIATION SERVICE  
UNITED STATES GOVERNMENT  
WASHINGTON, D.C. 20427

April 18, 1973

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post Office  
and Civil Service  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

The Federal Mediation and Conciliation Service is pleased to respond to your request for comments on H. R. 13, the "Federal Employee Labor-Management Act of 1973."

The following comments are limited to those sections of the legislation which directly affect the Service's mission in the areas of negotiation impasse resolution (Title IX) and grievance settlement (Title XI).

To insure that the Service's mediation assistance can contribute to the resolution of negotiation impasses to the fullest extent possible, the following changes are proposed under Title IX, Section 901, on page 24:

(a) No change in this subsection.

(b) Delete present language and insert "when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service fail to resolve a negotiation impasse, the Service shall transmit to the Authority certification that the parties have reached a negotiation impasse with no foreseeable chance for settlement of the dispute."

(c) Delete this subsection.



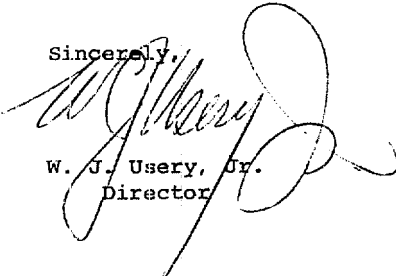
(d) Delete "If the parties do not arrive at settlement through such other means." Retain the remainder of this subsection.

These recommendations are based upon the Service's experiences which reveal that mediation is most effective when the parties have no direct access to a forum beyond mediation. In lieu of a party's ability to request Authority consideration, the sole means for such consideration under the above recommendation is through a certification by the Service that an impasse exists with no foreseeable chance for settlement.

This Agency has provided arbitration services for labor and management in the private sector since 1947, and in the federal sector since 1969. Should our services be required by this Bill under Title XI, or similar legislation, we stand ready to assist the parties in grievance settlement by providing them with panels of qualified arbitrators.

Thank you for the opportunity to respond to your Committee on the subject of Federal labor relations legislation.

Sincerely,



W. J. Usery, Jr.  
Director



THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20004

WALTER E. WASHINGTON  
Mayor-Commissioner

May 24, 1974

Honorable Thaddeus J. Dulski  
Chairman  
Committee on Post Office and  
Civil Service  
United States House of Representatives  
Washington, D. C.

Dear Mr. Chairman:

The Government of the District of Columbia wishes to report on H.R. 13, a bill "To provide for improved labor-management relations in the Federal service, and other purposes."

This bill would give statutory form to labor-management relations within the Federal Service. For over a decade such matters have been governed administratively by Executive Orders of the President of the United States. The current expression of executive policy on this subject is Executive Order No. 11491, as amended (3 C.F.R. 262, 5 U.S.C.A., sec. 7301).

Historically, the Government of the District of Columbia has not been covered by these Executive Orders. Instead, the District has developed a comprehensive labor-management program of its own which is headed by a Board of Labor Relations, deriving broad powers by delegation from the Commissioner of the District of Columbia. This Board is comprised of two members nominated by unions and two by management, with the Chairman nominated by the four members. All members are impartial experts in the field of management relations. The Board has jurisdiction to resolve disputes over many traditional labor-management subjects, including determination of appropriate

bargaining units, unfair labor practices, and negotiation impasses. This system has been in existence for three years, and its success may be measured by the fact that its coverage has been extended this year to include the Metropolitan Police Department and, by voluntary agreement, the Board of Trustees of the District of Columbia Public Library.

H.R. 13 would work a fundamental change in the District's labor-management program. Section 201(b)(3) of the bill would remove from District control, for labor-management purposes, those employees "having positions in the competitive service", and transfer jurisdiction to a newly created Federal Labor Relations Authority having this function. Since only a small portion of District employees are within the definition of competitive service, 1/ the effect of this bill would be to create two separate labor-management programs for the District Government. In our view this development would be contrary to sound administrative practice, and not in keeping with the broad purpose of H.R. 13.

Moreover, as the District of Columbia teachers' strike in the fall of 1972 suggests, the labor problems faced by the District Government are uniquely those of a municipality, and not of an Executive Department of the Federal Government. The Commission on the Organization of the Government of the District of Columbia (Nelsen Commission) had this difference in view when it concluded:

"If the District is to have a highly effective, efficient and responsive personnel system the Commission believes that it must be independent of the Federal Government. Administering a personnel program in a municipality is very different from administering one in the Federal Government. Levels

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1/ 5 U.S.C., sec. 2102(a)(3); Report of the Commission on the Organization of the Government of the District of Columbia, H.R. Doc. No. 92-317, 92d Cong., 2d Sess., vol. II at 542 (1972).

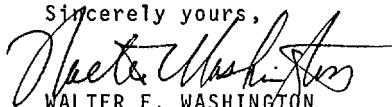
of responsibility, the physical dispersion of employees, and the range and types of jobs are all different. Administration of the District's personnel program should not be a Federal responsibility." 2/

The Commission recommended that an autonomous personnel system, independent of the Federal Government, be created for the District of Columbia Government, one which would "provide for a positive policy of labor-management relations, including collective bargaining, between the Government of the District of Columbia and its employees". 3/ Coverage of District employees under H.R. 13 would not be consistent, in our view, with the implementation of this recommendation or consonant with the thrust of the new form of government authorized by the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93-198).

Accordingly, I recommend that the Government of the District of Columbia be excluded from coverage under H.R. 13, by appropriate amendments which would strike out section 201(b)(3) and insert immediately before the period at the end of section 201(b)(7) the phrase "and the Government of the District of Columbia".

The Office of Management and Budget has advised that there is no objection to the submission of this report, but that enactment of H.R. 13 would not be in accord with the program of the President.

Sincerely yours,

  
WALTER E. WASHINGTON  
Mayor-Commissioner

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2/ H.R. Doc. No. 92-317, supra, vol. II at 640.

3/ H.R. Doc. No. 92-317, supra, vol. II at 641.

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D. C. 20415

17 MAY 1974

Honorable Thaddeus J. Dulski  
Chairman, Committee on Post  
Office and Civil Service  
U.S. House of Representatives  
207 Cannon House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the Commission's views on H.R. 9784, a bill "To establish a Federal Employee Labor Relations Board to regulate Federal labor-management relations and for other purposes."

The Commission recommends against enactment of H.R. 9784 for the reasons stated below.

H.R. 9784 proposes the establishment of a statutory framework for labor-management relations in the Federal service to replace the existing system originally provided under Executive Order 10988 and continued by Executive Order 11491, as amended.

This bill conflicts with the general public interest and with the unique characteristics of public employment. We believe that it is unsound, and costly, and that it would be disruptive to an existing, orderly labor-management relationship.

As discussed in our letter of May 23, 1973, commenting on H.R. 13, the present labor-management relations system has been sound and of benefit to both the effective and efficient administration of Government operations and the well-being of Federal employees. The existence of third-party machinery for the resolution of union-management disputes has facilitated orderly and constructive relationships between unions and agency management. The system serves to identify and resolve employee problems and, through consultation and negotiations, to achieve appropriate union-management understandings that have accommodated employee needs and improved the operation of Federal agencies.

In the dynamic atmosphere of labor-management relations, the fact that the present system is based upon administrative direction has permitted the making of necessary, periodic adjustments to problems evidenced through program experience.

The program is still relatively young, still very much evolving--moving forward in a balanced, constructive manner, responsive to the special requirements of the Federal service and the public interest. To place this program into a statutory framework would be to restrain its demonstrated capacity to grow, to change and to adapt. The program as presently constituted represents an effective melding of labor relations and personnel management. Both are essential aspects of one another, and work best when, as now, they are integrated into an overall effort that recognizes both the value of employee representation and the need for efficient conduct of the public's business.

To facilitate analysis of the bill, our comments are arranged by topic areas. Also, in most instances the relevant sections of the bill are cited.

#### Coverage

All Federal departments and agencies excluding only the Postal Service are subject to H.R. 9784. /Sec. 3(b)(c)/. This broad-brush coverage fails to provide for the special problems and separate circumstances applicable to security agency employees, and to employees in competitive positions in the legislative and judicial branches and the District of Columbia, the Library of Congress, the Government Printing Office, and the Federal Reserve System. For example, it would include the Federal Bureau of Investigation, the Central Intelligence Agency and other agencies, offices and bureaus which have as a primary function intelligence, investigative or security work. Covered as well would be any office, bureau or entity of an agency which has as a primary function investigation or audit of the conduct of work of officials or employees of the agency for the purpose of assuring honesty and integrity in the discharge of their official duties.

The authority of agency heads to exclude installations outside the United States would also be revoked. Coverage under the bill would extend to foreign nationals, the uniformed services in the Department of Health, Education and Welfare (the Public Health Service), Commerce (NOAA), and Department of Transportation (USCG), and independent Government corporations. Additionally, Sec. 3(n), by defining "labor dispute" as any controversy covering terms, tenure, and conditions of employment or other matters of mutual concern relating thereto, may well permit, through lack of clarity of definition, labor organization involvement in contractual relationships between the Government and private contractors,

thus going beyond the parameters of employer-employee relationships. Lacking important necessary exclusions from its coverage, H.R. 9784 thus conflicts with national security and public interests, extending to the possible violation of U.S. agreements with host countries by covering foreign nationals.

H.R. 9784 ignores areas of conflict of interest in several ways. For example, supervisors of firefighters, public safety officers and educational employees /Sec. 6(f)/ could be included in units with non-supervisory employees, creating a situation of side-by-side representation with rank-and-file employees. The lack of prohibition on the inclusion of guards with non-guard employees raises another conflict-of-interest question, especially in view of the express allowance, under specified circumstances, for strikes in labor disputes.

H.R. 9784 fails to limit supervisors and managers from being involved in the management of labor organizations. Thus, managers, supervisors and others with potential or apparent conflicts of interest could assume leadership roles in labor organizations to the detriment of sound management practices, and good labor relations.

In addition, certain employee organizations which are recognized as exclusive representatives of employees under the present Order could be excluded from coverage by H.R. 9784 because of the definition of "labor organizations" in Section 3(d). It defines "labor organization" as any national or international union, federation, council, or department, or any affiliate thereof which exists for the primary purpose of dealing with agencies concerning grievances and conditions of work. Thus, some local, independent labor organizations which act as exclusive bargaining agents for employees could be deprived of continued recognition for failing to satisfy the requirement that they affiliate with a national or international union. Also unclear is the reference to existing for the "primary purpose" of dealing with agencies concerning aspects of employment.

#### Administration

To administer the Act, a strong centralized Federal Employees Labor Relations Board would be established /Sec. 4/. The Board, consisting of five Presidential appointees, would be virtually independent and would supplant the key existing third-party agencies authorized under the Executive Order program. With greater authority concentrated in one agency and with the enlarged scope of bargaining, the Board would be making decisions which would impact on budget and public personnel policy, resulting in a major revision in the entire Federal civil service system.

In addition, there is a question as to how the Board would be staffed as there is no indication in the bill whether employees of the Board would be included under the pay and classification procedures of law.

The Board, under section 11(f) may enforce its orders in court against another Federal agency - a questionable procedure which could prove to be untenable in the orderly conduct of the Government's business.

#### Representation

The bill provides for certification, with agency concurrence, of an exclusive bargaining agent without an election /Sec. 6(b)/; whereas under E.O. 11491 a secret ballot election is required in all instances. This bill would thus permit certification of the exclusive representative of all the employees in the bargaining unit without regard to the desires of the employees freely expressed at the ballot box.

Another aspect of the bill which should be noted is that employees engaged in administering the Act are not prohibited from being represented by a labor organization which also represents other groups of employees, or which is affiliated directly or indirectly with an organization which represents such a group of employees. Representation of these employees under the provisions of the Act - even by an independent association - would present potential conflict of interest problems for the employees in the performance of work involving the resolution of union-management disputes.

An additional aspect of the bill which warrants attention is that unlike E.O. 11491, the bill fails to provide that an agency can consult or deal with religious, social, fraternal, professional or other lawful associations. This is with respect to matters or policies involving individual members of the association or which are of particular applicability to it or its members and not in conflict with the rights of labor organizations.

#### Entitlements

H.R. 9784 requires that all non-labor organization members in an exclusive unit, as a condition of continued employment, pay to the labor organization having exclusive recognition an amount equal to the dues, fees and assessments that a member is charged. This is an agency shop provision /Sec. 5(c)/. Requiring membership in a labor organization or mandatory payment of equivalent fees as a condition of Federal employment conflicts with merit principles which base continued employment on ability to do the job assigned and which bar use of discriminatory measures in making personnel decisions.

This bill grants dues withholding as a matter of right. This goes well beyond private sector practices where the issue is negotiable; and would deny management bargaining latitude in responding to traditional objectives of labor organizations for union security arrangements and dues checkoff.



The bill would grant to labor organizations which have no recognition whatsoever many of the rights presently reserved under E.O. 11491 for exclusive representatives. For example, Section 5(b) grants unrecognized labor organizations voluntary dues withholding privileges, subject to reasonable regulation, and also the use of employer bulletin boards, mailboxes and other communications media. Additionally, such labor organizations would have the right of representation at discussions between an agency and employees concerning grievances, potential grievances, personnel policies and practices and other matters affecting working conditions of employees in the unit. Once exclusive recognition is granted, the bill provides that these rights would be reserved only for the exclusive representative.

#### Negotiation

The retained rights of management, as contained in E.O. 11491, the Postal Reorganization Act, and inherent in various U.S. Laws are absent from the bill. For example, there is no provision, as in the Order, that management officials of an agency would retain the right, in accordance with applicable laws and regulations, to direct employees of the agency, to hire, promote, transfer, assign, and retain employees in positions within the agency, and suspend, demote, discharge or take other disciplinary action against employees. Management would be obligated to negotiate on matters with respect to the mission of the agency, its budget, its organization, and the technology of work. This bill would make virtually all aspects of employment negotiable [Sec. 3(m) & (p)]. Conceivably, public policy as it affects employment - the agency mission - would be negotiable, with negative impact on the functioning of responsible, representative government.

The ability of Federal managers to guide an agency in the accomplishment of its mission would be damaged by preempting agency regulations which conflict with negotiated agreements or restrict the scope of bargaining--reversing the current requirement that negotiated agreements conform to higher level agency regulations [Sec. 3(m)]. Agencies or the Civil Service Commission could not make or apply rules or regulations where needed to protect the public interest - including merit principles in Federal employment - and maintain efficiency of Government operations. Policies and regulations designed to achieve a desirable degree of uniformity and equity in the administration of matters common to all employees of the agency, or to employees in more than one subordinate activity, would be adversely limited. Such one-sided provisions of H.R. 9784 certainly are against the public interest.

The grievance definition [Sec. 3(q)] and procedure [Sec. 8] set forth in H.R. 9784 are so broad as to appear to encompass many matters which directly by law or indirectly by Civil Service Commission regulations pursuant to law are covered by existing appeals procedures. Coupled with

the provision /Sec. 8(a)/ giving direct, legal right to binding arbitration of grievances, this provision would turn over to arbitrators many decisions which Congress up to now has deemed should be made by other institutions of Government--for example, classification appeals, equal employment opportunity appeals, performance-rating appeals and political interference appeals.

#### Impasses

Unions and employees would have the right to strike as an option in negotiation disputes, according to the bill's impasses procedure. /Sec. 7 & 9(a)/. This right would be limited, however, upon demonstration by an agency that such strike posed a clear and present danger to the public health or safety, or was in violation of the provisions of a negotiated agreement, in which case a court, after due notice and hearing, could issue a restraining order or temporary or permanent injunction. Even recognizing these restrictions, granting a labor organization and employees the right to strike against the Federal Government in a labor dispute simply is not compatible with the public's need for uninterrupted continuity of Government functions and national defense concerns.

In opposing the right to strike for Federal employees, we are aware that this right is available to employees in the private sector. The Government, however, is unique in the services it renders to all segments of the society; it is monopolistic in the performance of its functions; and the continuity and maintenance of its operations is both essential and central to the national well-being. The public expects and needs an uninterrupted continuity of vital national functions, including defense, public safety, public health, and critical welfare and financial services. Although strikes are unacceptable as a method of resolving Federal labor-management disputes, we recognize the need for alternative non-disruptive mechanisms for the settlement of disputes. Such mechanisms are available and are functioning well under the present Executive Order program.

#### Unfair Labor Practices

H.R. 9784 fails to make it an unfair labor practice for labor organizations to call or participate in strikes, slowdowns, or picketing against Federal activities; or to coerce, attempt to coerce, or discipline, fine, or take other economic sanction against members of the organizations as punishment or reprisal for, or for the purpose of hindering or impeding their work performance, their productivity, or the discharge of their duties as employees of the United States. /Sec. 10(b)/. These prohibited practices are contained in the present Executive order. Without such strictures there would be no effective sanction against such unfair union actions. This would substantially weaken existing and conventional standards for responsible unionism.

Standards of Conduct

H.R. 9784 fails to establish any requirement for labor organizations to maintain democratic procedures, prohibit conflict of interests or maintain fiscal integrity. Labor organizations in the current Federal program are subject to standards of conduct and reporting requirements similar to the Landrum-Griffin Act in the private sector. H.R. 9784 would release them from this responsibility and remove any obligation for demonstrated compliance with stated standards.

Supersedure

H.R. 9784 would modify or repeal all laws or parts of laws inconsistent with its provisions as well as taking precedence over "all ordinances, rules, regulations or other enactments." /Sec. 12(b)/. This raises serious questions as to the extent to which civil service laws such as all of Title 5, U.S.C. may be overridden. It also raises questions concerning the degree to which Congressional authority and determination would be affected in areas such as pay, benefits and classification. In its present form, the supersedure clause appears to open to negotiation many areas presently subject to Congressional action. For example, would two separate retirement and leave systems evolve, one for unit members and another for non-unit members? Would different agencies and/or installations negotiate different leave or insurance programs? Would supersedure be selective? If not, who would determine the criteria and which acts would be replaced and which would not? Or would present enactments merely serve as a floor for the negotiation of further benefits? These are all questions which H.R. 9784 fails to answer; the answers to which could greatly affect the Congress' present authority over determining Federal employee benefits, pay and classification.

Costs

H.R. 9784 would result in additional unwarranted costs as a result of proliferation of appropriate units, the apparent addition of union functions under the Act on government time, expenses related to the administration of the Act and extra cost to carry out agency obligations under the provisions of the Act.

Therefore, because of the objections cited above, and others, the Civil Service Commission strongly recommends against enactment of H.R. 9784. The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 9784 would not be in accord with the program of the President.

By direction of the Commission:

Sincerely yours,  
Robert E. Hampton  
Chairman

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